Table of Contents

CHAPTER 3

International Criminal Law

A. EXTRADITION AND MUTUAL LEGAL ASSISTANCE

1. Extradition Treaty with Chile

On September 17, 2014, President Obama transmitted to the Senate for its advice and consent to ratification the Extradition Treaty between the Government of the United States and the Government of the Republic of Chile. Daily Comp. Pres. Docs. 2014 DCPD No. 00673 p. 1 (Sept. 17, 2014). In his message transmitting the Extradition Treaty, President Obama said:

> The Treaty would replace the outdated extradition treaty between the United States and Chile, signed at Santiago on April 17, 1900 (the "1900 Treaty"). The Treaty follows generally the form and content of other extradition treaties recently concluded by the United States. It would replace an outmoded list of extraditable offenses with a modern "dual criminality" approach, which would enable extradition for such offenses as money laundering and other newer offenses not appearing on the list from the 1900 Treaty. The Treaty also contains a modernized "political offense" clause and provides that extradition shall not be refused based on the nationality of the person sought. Finally, the Treaty incorporates a series of procedural improvements to streamline and speed the extradition process.

The transmittal package, including the Department of State's report which provides an overview and article-by-article analysis of the Treaty, is available at *www.gpo.gov/fdsys/pkg/CDOC-113tdoc6/pdf/CDOC-113tdoc6.pdf*.

2. Cooperation Agreement with Southeast European Law Enforcement Center

On September 9, 2014, the United States and the Southeast European Law Enforcement Center ("SELEC") signed an agreement relating to cooperation in preventing, detecting, suppressing and investigating crime, including serious and organized crime, particularly crime involving trans-border activity. The agreement is available at *http://www.state.gov/documents/organization/235203.pdf*. The SELEC Convention was signed in 2009. The SELEC Council granted operational partner status to the United States as a predicate to its entering into the agreement and the United States had provided organizational and financial support in the development of SELEC. The agreement envisions cooperation in the forms of, *inter alia*, exchanging information and engaging in coordinated investigations.

3. Extraditions

On May 9, 2014, the State Department issued a press statement regarding the extradition on May 8, 2014 of Carlos Lobo to the United States on drug trafficking charges. The press statement, available at *www.state.gov/r/pa/prs/ps/2014/05/225844.htm*, explains that the Honduran Supreme Court had authorized the extradition and that it was a "historic step…which strikes a blow against impunity for organized crime and narcotics trafficking." The press statement further states:

> Mr. Lobo's extradition is an important affirmation of the rule of law in Honduras and a strong signal that President Juan Orlando Hernandez is fully committed to stopping the use of Honduran territory for illicit activity.
>
> The Government of Honduras, including its Supreme Court, has sent a clear message that those accused of crimes that jeopardize the safety of Honduran citizens will not be allowed to hide from justice. The United States fully supports Honduran efforts to strengthen the rule of law and improve the quality of life for all Hondurans.

4. Extradition Cases

a. Patterson

On May 29, 2014, the United States filed its brief in the U.S. Court of Appeals for the Ninth Circuit in an appeal from a district court decision denying a habeas petition by Mr. Patterson after he had been certified for extradition to the Republic of Korea to face a murder charge. *Patterson v. Wagner*, No. 13-56080. Patterson contended that the statute of limitations provision in the U.S. -Republic of Korea extradition treaty ("Treaty") and the Status of Forces Agreement ("SOFA") between the two countries both presented bars to his extradition. Excerpts follow (with footnotes and citations to the record omitted) from the section of the U.S. brief addressing petitioner's argument

regarding the extradition treaty. The brief is available in full at www.state.gov/s/l/c8183.htm.

* * * *

C. The District Court Properly Denied the Habeas Petition Because the Discretionary Statute of Limitations Provision in the Treaty Did Not Bar the Magistrate Judge's Certification of Extradition

1. The unambiguous plain language of the statute of limitations provision in the Treaty is discretionary; therefore, the issue of whether extradition can be denied on this ground is solely within the authority of the Secretary of State

Article 6 of the Treaty provides:

> Extradition *may* be denied under this Treaty when the prosecution or the execution of punishment of the offense for which extradition is requested would have been barred because of the statute of limitations of the Requested State had the same offense been committed in the Requested State.

Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Korea, U.S.-S.Kor., art. 6, June 9, 1998, S. Treaty Doc. No. 106-2 ("the Treaty") (emphasis added) .

The magistrate judge certified petitioner for extradition based on the court's finding that there. The magistrate judge also found that, under federal law, the statute of limitations for bringing such a charge is five years from the date of the crime. There is no dispute that the Korean prosecution of petitioner for murder began more than five years after the killing. Based on the foregoing, petitioner contends that the Republic of Korea's extradition request is barred under the statute of limitations provision of the Treaty. However, the plain text of the Treaty and the direct holdings of several Ninth Circuit decisions refute petitioner's claim.

Where the language of a treaty is clear on its face, courts are powerless to divine a different meaning through an examination of other sources:

> "The interpretation of a treaty, like the interpretation of a statute, begins with its text." *Medellin v. Texas*, 552 U.S. 491, 506, 128 S. Ct. 1346, 170 L. Ed. 2d 190 (2008). And, where the text of a treaty is clear, a court has "no power to insert an amendment" based on consideration of other sources. *Chan v. Korean Air Lines, Ltd.* , 490 U.S. 122, 134, 109 S. Ct. 1676, 104 L. Ed. 2d 113 (1989).
>
> *Chubb Ins. Co. of Europe S. A. v. Menlo Worldwide Forwarding, Inc.* , 634 F.3d 1023, 1026 (9th Cir. 2011); ….

This Court has explicitly considered the meaning of the word "may" as used in an extradition Treaty. In *Vo*, 447 F.3d at 1246, this Court stated:

> Extradition treaties often provide for the general extraditability of individuals who commit offenses that are recognized as crimes in both the requesting and the requested states, subject to enumerated exceptions. These exceptions are of two general types: mandatory exceptions (including political offenses) and discretionary exceptions.

The Court explained that the word "shall" in a treaty indicates a mandatory exception, and "may" indicates a discretionary exception:

> The two types of exception are characterized by different language in extradition treaties. The use of "shall" language in a treaty indicates a provision constitutes a mandatory

> exception. For instance, Article 3(1)(a) of the Treaty provides, "[e]xtradition shall not be granted when: the offense for which extradition is sought is a political offense." The use of "may" language in a treaty indicates a provision constitutes a discretionary exception. Article 5(2) of the Treaty, for example, provides "[e]xtradition may be denied when the person sought is being or has been proceeded against in the Requested State for the offense for which extradition is requested."

Id. at 1246 n. 13. Of course, "[i]f an individual falls within a mandatory exception, the United States cannot extradite him to the requesting country and the magistrate may not certify him as extraditable." *Id*. at 1246. In contrast, "[i]f an individual falls within a discretionary exception …the United States can choose not to extradite him to the requesting country, but it is under no obligation to the relator to do so." *Id*. Accordingly, "[w]hen requested by the United States, the magistrate must certify [for extradition] an individual even though he may be subject to a discretionary exception." *Id*. (emphasis added).

Similarly, in *Prasoprat*, 421 F.3d at 1014, the relevant treaty stated that the requested nation "may refuse extradition" in the event that the offense involved the potential application of the death penalty in the requesting nation. This Court determined that the treaty "clearly provides that the executive branch holds the authority for determining extradition," and that, assuming all other elements of extradition were found, the court "must certify the individual as extraditable" without analyzing the discretionary exception to extradition in the treaty.

Therefore, when an extradition treaty contains a discretionary provision, it is for the executive branch of the United States through the Secretary of State to exercise that discretion; the magistrate judge hearing the extradition is prohibited from doing so. The *Vo* Court concluded that a person who falls into a discretionary exception to extradition "can still be extradited if the Secretary of State so decides." *Id*. at 1246; see also *Blaxland v. Commonweath Dir. of Pub. Prosecutions*, 323 F.3d 1198, 1208 (9th Cir. 2003) ("Once a magistrate judge confirms that an individual is extraditable, it is the Secretary of State, representing the executive branch, who determines whether to surrender the fugitive."). The *Prasoprat* Court emphasized that the magistrate judge "simply does not have the authority to consider foreign policy concerns and other issues that may affect the executive branch's decision whether to extradite." 421 F.3d at 1017. See *Blaxland*, 323 F.3d at 1208 (stating that "the executive branch's ultimate decision on extradition may be based on a variety of grounds, ranging from individual circumstances, to foreign policy concerns, to political exigencies").

The language used in the statute of limitations provision of the Treaty here is identical to that used in *Vo* and *Prasoprat*. With the use of the word "may," the Treaty expressly creates a discretionary exception to extradition reserved to the executive branch of government. However, despite the use of the discretionary word "may" in Article 6 of the Treaty, petitioner continues to insist that the provision "was meant to serve as a mandatory bar to extradition." Petitioner misconstrues not only the discretionary nature of Article 6 as a whole but also the import of each of the sentences contained in the provision. The first sentence of Article 6 provides that extradition "may" be denied if the statute of limitations would bar prosecution in the requested state. The next two sentences explain how to properly calculate the statute of limitations for purposes of this provision. The second sentence provides for excluding the time when the person sought to be extradited was a fugitive from justice and the third sentence provides for excluding time when any other act or circumstance would toll the statute of limitations according to the laws of either party to the Treaty.

These provisions are not, as petitioner contends, exceptions to a mandatory bar of extradition. They do not restrict the discretion of the executive branch to ultimately grant or deny extradition but rather merely provide the parameters for determining when the limitations period should be tolled. The ultimate question of whether a criminal can be extradited even if his crime was committed outside the limitations period remains within the discretion of the executive branch because of the word "may" in the first sentence of Article 6. The latter two sentences of the provision certainly do not constrain the magistrate judge's decision to certify the case for extradition. It is the word "may" in the first sentence of the provision that requires the magistrate judge to leave the ultimate question of whether the petitioner should be extradited despite a possible violation of the applicable statute of limitations up to the discretion of the executive branch. Indeed, the discretionary language of this provision prohibits the magistrate judge from denying certification on this basis.

Furthermore, because there is no ambiguity in the language of Article 6 of the Treaty, the magistrate judge's interpretation of the Treaty was "governed by the text" and he had "no power" to rewrite the Treaty through a consideration of other sources. *Chan*, 490 U.S. at 134. Petitioner contends, however, that the magistrate judge erred in relying on the plain language of Article 6 in determining that the statute of limitations provision is a discretionary one. While admitting that courts are required to analyze the plain language of a treaty in order to interpret its meaning, petitioner erroneously insists that courts are also required to look beyond the text and consider other sources even where the plain language of the text is not ambiguous.

However, the authorities petitioner relies on do not support this contention. Although courts "may look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties," *Eastern Airlines v. Floyd*, 499 U.S. 530, 535 (1991) (quoting *Air France v. Saks*, 470 U.S. 392, 396 (1985)), and "[o]ther general rules of construction may be brought to bear on difficult or ambiguous passages," id. (quoting *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 700 (1988)), none of these cases requires consultation with extratextual sources especially where, as here, the plain text of the Treaty provision is unambiguous. …

* * * *

3. Construing Article 6 as discretionary furthers the object and purpose of the Treaty, which is to facilitate the extradition of criminals

Petitioner posits that a treaty should be interpreted so as to give effect to its "objects and purposes." However, rather than discussing the objects and purposes of the Treaty, petitioner cites authorities that discuss the purpose of a statute of limitations provision, which, as the government agrees, is to bar belated prosecutions of stale crimes. However, the individual provisions of a Treaty must further the objects and purposes of the Treaty as a whole. Thus, petitioner's argument that because the purpose of a statute of limitations provision is to bar the belated prosecution of a stale crime, all statute of limitations provisions should be interpreted as mandatory, is both self-serving and fails to further the objects and purposes of the Treaty.

The pre-ratification record of the Treaty at issue clearly demonstrates that the primary object and purpose of the Treaty was to facilitate the extradition of criminals for prosecution in the United States and the Republic of Korea…

The only discussion of the statute of limitations provision of the Treaty was in the context of a concern by both the legislative and executive members of the U.S. Senate Committee on

Foreign Relations that the provision be worded in such a way that criminals would not be able to escape justice by fleeing the prosecuting country until the statute of limitations period had run out. Thus, the interpretation of this provision as discretionary, allowing for a case-by-case determination of the applicability of the statute of limitations bar by the Secretary of State, rather than by a magistrate judge who has limited authority in extradition matters, does comport with the objects and purposes of the Treaty.

* * * *

b. Trabelsi

On October 29, 2014 the United States filed its brief in opposition to defendant Nizar Trabelsi's motion to dismiss the superseding indictment against him based on his claim that his extradition to the United States violated the extradition treaty between the United States and the Kingdom of Belgium. Specifically, Trabelsi claimed that his extradition violated the double jeopardy provision in Article 5; the rule of specialty in Article 15; and Article 6 regarding the extraditing state's domestic law. Trabelsi was originally indicted in 2006, and in a superseding indictment in 2007, on multiple counts of federal crimes of terrorism. In 2008, the United States requested extradition, which Belgium's Minister of Justice granted in 2011. In October 2013, Trabelsi was extradited to the United States. See *Digest 2013* at 33. Excerpts follow (with footnotes and citations to the record omitted) from the U.S. brief in opposition to Trabelsi's motion to dismiss the indictment. The U.S. brief is available in full at www.state.gov/s/l/c8183.htm.

_____

* * * *

A. The Belgian Minister of Justice Specifically Considered and Rejected Restrictions on Defendant's Extradition Based on the U.S. Indictment

Article 5 of the Treaty prohibits extradition "when the person sought has been found guilty, convicted or acquitted in the Requested State for the offense for which extradition is requested." Defendant contends that his extradition "violated this provision because he was convicted in Belgium for the offenses charged in the Indictment." The Belgian Minister of Justice, however, specifically considered and rejected any restrictions on defendant's extradition to face charges in the U.S. indictment based on double jeopardy considerations set forth in Article 5.

The Minister of Justice, after comparing the offenses pursued in the Belgian prosecution and the offenses set forth in the U.S. indictment, explained that no double jeopardy concerns arise from Article 5:

> In this case, the offenses for which the person to be extradited was irrevocably sentenced by the Court of Appeal of Brussels on 9 June, 2004 do not correspond to the offenses listed under counts A through D that appear in the arrest warrant on which the U.S. extradition request is based. The essential elements of the respective US and Belgian

offenses, their scope and the place(s) and time(s) when they were committed do not correspond.

Indeed, each of the charged offenses in the U.S. indictment is notably distinct from the offenses prosecuted in Belgium. Significantly, for example, the U.S. indictment specifies that "the objects of the conspiracy were to destroy by terrorist means—including destructive violence and murder—people, property, and interests of the United States of America, *wherever located*." Thus, while paragraph 25 of the indictment references defendant's efforts "to scout the Kleine-Brogel Air Force Base … as a target for a suicide bomb attack," the indictment is not limited to that location, as defendant suggests. In fact, paragraph 9.D. of the indictment explains that "[o]perational targets were changed as circumstances changed."

Even defendant recognizes that each of the offenses set forth in the indictment is charged distinctly. … As a result, defendant attempts to support his challenge by stating that, "[i]f permitted to proceed with this prosecution, the government will present at trial only the narrow evidence of the plot to bomb Kleine-Brogel and thereby circumvent Article 5 of the Treaty". There is, of course, simply no evidence to support the contention that the government will not proceed at trial on the indictment as charged and, unsurprisingly, defendant cites none.

B. This Court Should Decline Defendant's Invitation to Second-Guess the Minister of Justice's Determination that Extradition Was Proper

Because the Belgian Minister of Justice—the country's designated official for authorizing extradition—determined that no double jeopardy concerns arise under Article 5, any further comparative analysis of the Belgian and U.S. offenses is simply unnecessary and inappropriate. As the Diplomatic Note recognizes, the Minister of Justice's Order "is the decision by the Belgian government that sets forth the terms of [defendant's] extradition to the United States." U.S. courts have repeatedly stressed the importance of not interfering with such extradition determinations. Accordingly, the Court should reject defendant's labored efforts to engage in an after-the-fact comparative analysis in an attempt to support his extradition challenge.

* * * *

C. The Minister of Justice Extensively Considered and Specifically Rejected Arguments Based on the Doctrine of Non bis in idem *in Approving the U.S. Extradition Request*

Even looking, *arguendo*, more closely into defendant's purported comparison analysis, his claim still fails. The Minister of Justice extensively considered, and specifically rejected, arguments based on the doctrine of *non bis in idem*, similar to the contentions heavily relied upon in defendant's motion. Indeed, an entire section of the Minister of Justice's Order is devoted to the topic. Defendant specifically contends that "Article 5 of the Treaty incorporates the doctrine of *non bis in idem*" and consequently, "[i]n examining [defendant's] claims based on the principle of *non bis in idem*, [the court] must look not only to the denomination of the charged crime but the acts that constitute the alleged crime." Defendant further contends that "[a] comparison of the offenses in the United States with the charges prosecuted in Belgium, along with the alleged conduct underlying the charges, demonstrates that prosecution in the United States violates the principle of *non bis in idem*."

In the section of the Minister of Justice's Order specifically entitled, "The application of Article 5 of the Convention on Extradition (1987)—The principle of 'double jeopardy' concerns 'offences' and not 'facts'," the Minister of Justice explicitly rejected the premise, upon which defendant bases his entire challenge, that Article 5 incorporates the broader doctrine of *non bis in*

idem, rather than double jeopardy. The Minister of Justice emphasized that "it is not the deeds, but the designation of these, the offenses, that have to be identical" for purposes of the extradition limitation set forth in Article 5. *Id*. at 14 (emphasis added).

First and foremost, the Minister of Justice explained that the plain language of Article 5 specifically refers to "offenses," rather than "facts." The Minister of Justice emphasized that Article 5's specific reference to "offense" was not lightly included, and cited consistent wording in the provisions of other international agreements addressing "double prosecution or double punishment." …

The Minister of Justice also explained that, "[c]ontrary to the principle of '*ne (*or *non) bis in idem*,' the principle of 'double jeopardy' set forth in Article 5 of the convention on extradition limits itself to the same crimes or to crimes which are substantially the same." Contrary to defendant's contention that the court "must look not only to the denomination of the charged crime but the acts that constitute the alleged crime", the Minister of Justice emphasized that Article 5's double jeopardy concept "excludes the (same) elements of evidence, the (same) evidence or the (same) presented material facts that were, where necessary, used for proving the offenses for which the person had previously been prosecuted, convicted, or acquitted."

Rather, only "[t]o the degree that these factual and/or evidential elements are identical or substantially identical as the basis of an identical or substantially identical offense, second prosecutions are prohibited." Thus, the Minister of Justice makes abundantly clear that it is a comparison of the offenses, rather than the underlying acts, that controls the narrower double jeopardy determination under Article 5. This Court should decline defendant's request to revisit that determination. …

Notably, the Minister of Justice's determination is consistent with the intended interpretation of Article 5 by the United States at the time of the Treaty's ratification. As set forth in the Senate Report addressing its ratification, Article 5 was specifically intended to permit extradition if the person sought is charged in each respective country with different offenses despite the alleged similarity of the underlying conduct:

> **Article 5 – Prior jeopardy for the same offense**
>
> Paragraph 1, which prohibits extradition if the person sought has been found guilty, convicted, or acquitted in the Requested State for the offense for which extradition is requested, is similar to provisions in many United States extradition treaties. *This paragraph permits extradition, however, if the person sought is charged in each Contracting State with different offenses arising out of the same basic transaction.*

S. Rep. No. 104-28 (July 30, 1996) (original emphasis in heading, emphasis in text added); see *United States v. Stuart*, 489 U.S. 353, 368 n. 7 (1989) (recognizing that the Senate's preratification reports are a proper interpretative guide). Thus, even where the offenses arise, unlike here, from the same basic transaction, Article 5 is not intended to bar extradition. This interpretative construction is also consistent with the "familiar rule that the obligations of [a]n treaty should be liberally construed to effect their purpose, namely, the surrender of fugitives to be tried for their alleged offenses." *Ludecke v. U.S. Marshal*, 15 F.3d 496, 498 (5th Cir. 1994) (further recognizing that the "obligation to do what some nations have done voluntarily, in the interest of justice and friendly international relationships, …should be construed more liberally than a criminal statute or the technical requirements of criminal procedure") (citations omitted).

D. The Minister of Justice Specifically Considered and Rejected the Imposition of Any Limitations on the Evidence that Could Be Presented to Support the Prosecution of the U.S. Indictment, Following an Analysis of the Double Jeopardy Considerations Arising from Article 5

Recognizing the Minister of Justice's conclusion that "[t]he constitutive elements of the American and Belgian offenses respectively, their significance, and the places(s) and time(s) a which they were committed do not match," defendant attempts to relitigate his extradition challenge before this Court by arguing that the "Minister of Justice's finding was based on the mistaken belief that Mr. Trabelsi would not be prosecuted in the United States for acts that occurred in Belgium." In particular, defendant raises an apparent anticipatory challenge to the Government's use of evidence to prove certain overt acts set forth in the indictment which arise from defendant's conduct in Belgium, to the extent that the same evidence was used by the Belgian government in its prosecution. The Minister of Justice rejected that argument as well.

The Minister of Justice clarified that, as long as the *offenses* are not the same or substantially similar, the requesting government may pursue its prosecution based on *all* available evidence, even in circumstances, unlike here, where *all* the facts are identical to the set of facts used in prior proceedings in the surrendering country:

> Conforming to the principle of "double jeopardy" as set forth in Article 5, cited above, the authorities in charge of the prosecution may make selection among all available evidence in order to prosecute the person concerned for such [facts] or such (a) charge(s), even if all the facts are identical to the set of facts used in prior proceedings. This choice having been once made, the principle of "double jeopardy" forbids prosecution for the same offense or a substantially similar offense based on substantially similar facts (citing Michael ABBELL, Extradition to and from the United States, Leiden and Boston, Martinus Nijhoff-Brill, charts, pp. 52-58, and M. Cherif BASSIOUN I, International Extradition: United States Law and Practice, New York, Oxford University Press, Oceana, 5th edition, 2007, p. 749 and following).

Notably, while defendant quotes selected language out-of-context from the above passage stating that "the principle of 'double jeopardy' forbids prosecution for the same offense or a substantially similar offense based on substantially similar facts", defendant omits the qualifying language in the preceding sentence stating that "the authorities in charge of the prosecution may make selection among all available evidence in order to prosecute the person concerned for such [facts] or such (a) charge(s), even if all the facts are identical to the set of facts used in prior proceedings." The notable absence of this pertinent language speaks volumes of its effectiveness at directly undercutting defendant's contention that the government is now somehow prohibited from selecting among "all available evidence" in order to prosecute him.

* * * *

Finally, to the extent that the Minister of Justice believed that evidentiary limitations were somehow necessary to prevent defendant's prosecution in the United States in a manner that would purportedly violate Belgian domestic law, the Minister of Justice could have explicitly set forth those limitations, as it had done on other topics, such as emphasizing the restrictions on the defendant's prosecution by a "special court, namely a military commission" or punishment by the death penalty. No such limitations on the charges to be prosecuted or on the evidence to be presented were set forth, because no such concerns existed.

E. Even Assuming, Arguendo, that Defendant Could Somehow Substantiate a Violation of Article 5, Dismissal of the Indictment Is Not an Available Remedy

In addition to the deference, as discussed above, that must be accorded to foreign decisions granting extradition, "the Supreme Court has long held that illegalities in the manner in which a defendant is apprehended and brought within a court's jurisdiction neither deprive that court of its power to try the defendant nor require dismissal of the underlying charges." *Salinas Doria*, No. 01 Cr. 21, 2008 WL 4684229, at *4 (citing *Ker v. Illinois*, 119 U.S. 436, 440 (1886); *Frisbie v. Collins*, 342 U.S. 519, 522 (1952); *United States v. Alvarez-Machain*, 504 U.S. 655, 657 (1992)). In situations in which the Supreme Court has invoked the *Ker-Frisbie* doctrine, "the illegalities attending the manner of a defendant's apprehension have been blatant—often involving forcible abduction—and orchestrated or undertaken principally by agents of the government seeking to prosecute him." *Salinas Doria*, No. 01 Cr. 21, 2008 WL 4684229, at *4 (citing *Alvarez-Machain*, 504 U.S. at 657: *Frisbie*, 342 U.S. at 520; *Ker*, 119 U.S. at 438)).

Here, "it follows that charges against a defendant in an American court should not be dismissed solely because of an alleged defect in the judicial or diplomatic processes leading to that defendant's extradition." *Salinas Doria*, No. 01 Cr. 21, 2008 WL 4684229, at *4. Tellingly, defendant has cited no cases in which a court has deviated from "the broad rule of disregarding major or minor alleged violations of extradition treaties." *Id.* (further recognizing that "the cases following this [broad rule] are legion") (citations omitted). While possible exceptions to the *Ker-Frisbie* doctrine have been recognized in cases involving egregious misconduct on the part of the United States, defendant does not—and could not—argue that the particular violations that he alleges here are so extreme that they would warrant such an exception. Defendant only contends that his extradition violated Article 5 of the Extradition Treaty, which precludes the requested state from granting extradition "when the person sought has been found guilty, convicted or acquitted in the Requested State for the offense for which extradition is requested." The language of Article 5, however, sets forth circumstances in which extradition shall not be granted and makes clear that its prohibitions are directed to the extraditing state, not to the courts of the requesting state. Thus, the very treaty provision on which defendant relies even fails to offer any support for the proposition that the requesting state is prohibited from prosecuting where an Article 5 violation is alleged. See *id*.

II. Defendant's Challenge Based on Article 15, Embodying the Rule of Specialty, Must Fail

The rule of specialty is based on "principles of international comity and is designed to guarantee the surrendering nation that the extradited individual will not be subject to indiscriminate prosecution by the receiving government." *United States v. Leighnor*, 884 F. 2d 385, 389 (8th Cir. 1989) (citations omitted). The doctrine of specialty "requires that a requisitioning state may not, without the permission of the asylum state, try or punish a fugitive for any crimes committed before the extradition except the crimes for which he was extradited." *United States v. Kember*, 685 F. 2d 451 (D. C. Cir. 1982) (citations omitted); see *United States v. Puentes*, 50 F.3d 1567, 1572 (11th Cir. 1995) ("a nation that receives a criminal defendant pursuant to an extradition treaty may try the defendant only for those offenses for which the other nation granted extradition").

The Treaty incorporates the rule of specialty in Article 15, which provides that "[a] person extradited under this Treaty may not be detained, tried, or punished in the Requesting State except for . . . the offense for which extradition has been granted or a differently denominated offense based on the same facts on which extradition was granted… ." On the basis

of this doctrine, defendant asserts that the indictment must be dismissed. In particular, defendant claims that, although he is being prosecuted solely on the offenses set forth in the indictment upon which he was extradited, the Minister of Justice allegedly refused extradition with respect to Overt Acts 23, 24, 25, and 26, and those acts form the basis for charges in the indictment. Defendant's challenge is meritless and should be denied.

A. Standing to Assert a Rule of Specialty Violation

As a preliminary matter, there is some question whether defendant has standing to claim a violation of the rule of specialty. The United States Court of Appeals for the District of Columbia Circuit has twice recognized, without resolving, the "conflicting authority as to whether a criminal defendant—as opposed to the extraditing state—has standing to assert the doctrine of specialty." *United States v. Lopesierra-Gutierrez*, 708 F.3d 193, 206 (D. C. Cir. 2013) (citing *United States v. Sensi*, 879 F. 2d 888, 892 n. 1 (D. C. Cir. 1989)); see also *United States v. Day*, 700 F.3d 713, 721 (4th Cir. 2012) (recognizing "the circuits are split on the question of whether an individual defendant has standing to raise a specialty violation"). One court in this district stated, after *Sensi*, that "the rule of specialty is not a right of the accused but is a privilege of the asylum state," *Kaiser v. Rutherford*, 827 F. Supp. 832, 835 (D. D. C. 1993), but proceeded to "assum[e], arguendo, that the [defendant] had standing" and to reject the specialty challenge on the merits. *Id*. As in these three cases, this Court need not resolve whether defendant is permitted to raise a specialty claim because, as is explained below, that claim fails on the merits.

B. Even Assuming Defendant Has Standing to Assert a Rule of Specialty Violation, His Claim Must Fail

Even assuming arguendo defendant has standing to assert his specialty claim, it must be denied, especially in light of the narrow scope of review of such claims."[R]eview of the indictment is to be guided by the standard applicable to a defendant's assertion of the doctrine of specialty: 'whether the requested state has objected or would object to prosecution. '" *Sensi*, 879 F. 2d at 895 (citations omitted). At most, "[t]he extraditee's standing to assert the specialty principle is only derivative; the extraditee may object only to breaches to which the surrendering country would have been entitled to object." *Leighnor*, 884 F. 2d at 389 (citing *United States v. Diwan*, 864 F. 2d 715, 721 (11th Cir. 1989) and *United States v. Van Cauwenberghe*, 827 F. 2d 424, 428 (9th Cir. 1987)). Accordingly, in addressing defendant's claim that his extradition violated the rule of specialty, the inquiry must focus on the question of whether the Kingdom of Belgium would consider the extradition to be a breach of the specialty principle. *Leighnor*, 884 F. 2d at 389. Here, the Kingdom of Belgium would have no grounds to object to the extradition because defendant is being prosecuted for the exact charges in the indictment upon which his extradition was based. In fact, in addition to recognizing that the prosecution of defendant does not raise double jeopardy concerns, the Kingdom of Belgium explicitly recognized in its Diplomatic Note that, "[n]or does such trial and offering of proof violate the rule of specialty." See also *Kaiser*, 827 F. Supp. at 835 (D.D.C. 1993) (finding that the "rule of specialty is satisfied" where an individual's extradition was "for matters clearly set forth in the arrest warrant and other documents tendered to the Court"); *Day*, 700 F.3d at 721 (rejecting specialty claim where "defendant is tried for the exact offenses described in his extradition agreement").

Furthermore, neither the principle of specialty nor the manifestation of it in Article 15 lends support to defendant's contention that the evidence pertaining to Overt Acts 23, 24, 25 and 26 is somehow inadmissible to prove the charged offenses in the indictment. The United States Court of Appeals for the District of Columbia Circuit has stressed that the specialty doctrine "has

nothing to do with the 'scope of proof admissible into evidence in the judicial forum of the requisitioning state'". *United States v. Kember*, 685 F.2d 451, 458 (D.C.Cir. 1982) (quoting *United States v. Flores*, 538 F.2d 939, 944 (2d.Cir. 1976)). The Court in *Kember* explained that "the normal procedural and evidentiary rules continued to apply in the case" after extradition. 685 F. 2d at 458; see also *Lopesierra-Gutierrez*, 708 F.3d at 205-206 (holding that "[w]e agree with the other circuits to have considered this question that the doctrine of specialty governs prosecutions, not evidence") (citations omitted). …

* * * *

III. Defendant's Reliance Upon Article 6 of the Treaty To Challenge the Extradition Decision, as a Violation of Domestic Law, Is Misplaced

Finally, defendant argues that the Kingdom of Belgium somehow violated its own domestic law in granting the extradition request, and that the Indictment must be dismissed due to this alleged impropriety. Defendant specifically relies upon Article 6 of the Treaty, which provides: "Notwithstanding the provisions of the present Treaty, the executive authority of the Requested State may refuse extradition for humanitarian reasons pursuant to its domestic law." Defendant further argues that the Kingdom of Belgium violated its "domestic law" and, by implication, Article 6, through its decision to extradite defendant despite an ECHR interim measure, directing the Kingdom of Belgium not to extradite him until the conclusion of ECHR proceedings addressing his challenge to the extradition request. Defendant's baseless allegation should be rejected.

Courts have recognized that, given the substantial deference that must be provided to a foreign country's extradition determination, the courts of that foreign country should decide whether an executive could lawfully authorize an individual's extradition despite an alleged prohibition under domestic law. …

* * * *

Even putting aside the authority stressing that United States courts should abstain from entertaining jurisdictional claims grounded in a foreign country's alleged violation of domestic law, defendant's claim still must fail. On its face, Article 6 merely provides that the Kingdom of Belgium "may" exercise its discretion to refuse extradition under certain circumstances. In no way did this provision somehow require Belgium to act in a particular manner, as defendant alleges. See, *e.g.* , *United States v. Benov*, 447 F.3d 1235, 1246 n.13 (9th Cir. 2006) (recognizing the "use of 'may' language in a treaty indicates [that] a provision constitutes a discretionary exception"); *Salinas Doria*, No. 01 Cr. 21, 2008 WL 4684229, at *6 (explaining that the reference to "may" in a treaty provision "is explicitly permissive and discretionary and confers no rights or obligations of any kind on the extraditing country, let alone on the courts of the requesting country").

* * * *

5. Universal Jurisdiction

Leslie Kiernan, Senior Advisor, delivered remarks on behalf of the United States at the 69th General Assembly, Sixth Committee (Legal) Session on Agenda Item 83: The Scope and Application of the Principle of Universal Jurisdiction on October 15, 2014. The U.S. statement on universal jurisdiction is excerpted below and available at *http://usun.state.gov/briefing/statements/234017.htm*.

* * * *

Despite the importance of this issue and its long history as part of international law relating to piracy, basic questions remain about how jurisdiction should be exercised in relation to universal crimes and States' views and practices related to the topic. The submissions made by States to date, the work of the Working Group in this Committee, and the Secretary-General's reports on the issue, are extremely useful in helping us to identify differences of opinion among States as well as points of consensus on this issue.

In past years, the Committee has engaged on a number of important issues associated with universal jurisdiction, including its definition and the scope of the principle. We encourage this Committee to continue its work, and continue to believe that it would be fruitful to explore the practical application of universal jurisdiction. For instance, it would be useful to understand whether alternative bases of jurisdiction are relied upon at the same time.

Other topics that could warrant additional consideration in connection with discussion of the application of universal jurisdiction include: how states address competing jurisdictional claims by other states that may have a closer nexus to the underlying criminal act and whether and how national courts have addressed due process challenges.

The United States continues to analyze the contributions of other states and organizations. For instance, we were interested to see it reported that for some states, prosecution based on universal jurisdiction requires the authorization of the Government or a person designated by the government. We would be interested to learn what other conditions or safeguards states have placed on the exercise of universal jurisdiction. The United States believes that appropriate safeguards should be in place to ensure responsible use of universal jurisdiction, where it exists. We also note with interest the ICRC's views on procedural and evidentiary issues that may arise and would be interested in additional analysis of that aspect.

We welcome this group's continued consideration of this issue and the input of more states about their own practice. We look forward to exploring these issues in as practical a manner as possible.

* * * *

B. INTERNATIONAL CRIMES

1. Terrorism

a. Country reports on terrorism

On April 30, 2014, the Department of State released the 2013 Country Reports on Terrorism. The annual report is submitted to Congress pursuant to 22 U.S.C. § 2656f, which requires the Department to provide Congress a full and complete annual report on terrorism for those countries and groups meeting the criteria set forth in the legislation. The report is available at *www.state.gov/j/ct*. A State Department fact sheet about the 2012 Country Reports, available at *www.state.gov/r/pa/prs/ps/2014/04/225406.htm*, lists the following noteworthy counterterrorism developments in 2013.

_____

* * * *

- The terrorist threat continued to evolve rapidly in 2013, with an increasing number of groups around the world—including both al-Qa'ida (AQ) affiliates and other terrorist organizations—posing a threat to the United States, our allies, and our interests.
- As a result of ongoing worldwide efforts against the organization and leadership losses, AQ's core leadership has been degraded, limiting its ability to conduct attacks and direct its followers. Subsequently, 2013 saw the rise of increasingly aggressive and autonomous AQ affiliates and like-minded groups in the Middle East and Africa who took advantage of the weak governance and instability in the region to broaden and deepen their operations.
- The AQ core's vastly reduced influence became far more evident in 2013. AQ leader Zawahiri was rebuffed in his attempts to mediate a dispute among AQ affiliates operating in Syria, with the Islamic State of Iraq and the Levant publicly dissociating their group from al-Qa'ida. AQ affiliates routinely disobeyed Zawahiri's 2013 tactical guidance to avoid collateral damage, seen in increasingly violent attacks against civilian religious pilgrims in Iraq, hospital staff and convalescing patients in Yemen, and families at a shopping mall in Kenya, for example.
- Terrorist groups engaged in a range of criminal activity to raise needed funds, with kidnapping for ransom remaining the most frequent and profitable source of illicit financing. Private donations from the Gulf also remained a major source of funding for Sunni terrorist groups, particularly for those operating in Syria.
- In 2013, violent extremists increased their use of new media platforms and social media, with mixed results. Social media platforms allowed violent extremist groups to circulate messages more quickly, but confusion and contradictions among the various voices within the movement are growing more common.
- Syria continued to be a major battleground for terrorism on both sides of the conflict and remains a key area of longer-term concern. Thousands of foreign fighters traveled to Syria to join the fight against the Asad regime—with some joining violent extremist groups—while

Iran, Hizballah, and other Shia militias provided a broad range of critical support to the regime. The Syrian conflict also empowered the Islamic State of Iraq and the Levant to expand its cross-border operations in Syria, resulting in a dramatic increase in attacks against Iraqi civilians and government targets in 2013.

- Since 2012, the United States has also seen a resurgence of activity by Iran's Islamic Revolutionary Guard Corps' Qods Force (IRGC-QF), the Iranian Ministry of Intelligence and Security (MOIS), and Tehran's ally Hizballah. On January 23, 2013, the Yemeni Coast Guard interdicted an Iranian dhow carrying weapons and explosives likely destined for Houthi rebels. On February 5, 2013, the Bulgarian government publically implicated Hizballah in the July 2012 Burgas bombing that killed five Israelis and one Bulgarian citizen, and injured 32 others. On March 21, 2013, a Cyprus court found a Hizballah operative guilty of charges stemming from his surveillance activities of Israeli tourist targets in 2012. On September 18, Thailand convicted Atris Hussein, a Hizballah operative detained by Thai authorities in January 2012. And on December 30, 2013, the Bahraini Coast Guard interdicted a speedboat attempting to smuggle arms and Iranian explosives likely destined for armed Shia opposition groups in Bahrain. During an interrogation, the suspects admitted to receiving paramilitary training in Iran.
- "Lone offender" violent extremists also continued to pose a serious threat, as illustrated by the April 15, 2013 attacks near the Boston Marathon finish line, which killed three and injured approximately 264 others.
- The *Statistical Annex to Country Reports on Terrorism 2013* was prepared by the National Consortium for the Study of Terrorism and Responses to Terrorism (START) at the University of Maryland. The Statistical Annex data set includes violent acts carried out by non-state actors that meet all of START's Global Terrorism Database (GTD) inclusion criteria; further information about GTD can be found at *www.start.umd.edu/gtd*.

* * * *

b. UN Security Council

On January 27, 2014, the UN Security Council adopted Resolution 2133, which, among other things, identifies kidnapping for ransom as a source of terrorist financing. Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, commended the Security Council for adopting the resolution, in a statement available at *http://usun.state.gov/briefing/statements/220689.htm*. Ambassador Power stated:

> Over the last 10 years, terrorist organizations have collected well over $120 million in ransom payments, money they use to help fund the salaries, recruitment and training of new terrorists; to acquire weapons and communications gear; and to stage deadly attacks. By identifying and working to counter a key source of funding for terrorist groups, we are taking an important step to undermine the terrorists' business model by removing the financial incentive for them to conduct future kidnappings. We know that hostage takers looking for ransoms distinguish between those governments that pay ransoms

and those that do not—and that they make a point of not taking hostages from those countries that refuse to make concessions.

Extracting ransom through kidnapping is today's most significant terrorist financing threat because it has proven itself a frighteningly successful tactic. Every ransom paid to a terrorist organization encourages future kidnapping operations. Today's landmark resolution is a clear signal of our shared commitment to end kidnapping for ransom and to break a vicious cycle that finances further acts of terrorism.

On September 24, 2014, the UN Security Council adopted resolution 2178 on foreign terrorist fighters ("FTFs"). President Obama chaired the UN Security Council summit focusing on the surge in FTFs. The President's speech at the UN Security Council summit on FTFs is excerpted below and available at *www.whitehouse.gov/the-press-office/2014/09/24/remarks-president-un-security-council-summit-foreign-terrorist-fighters*.

* * * *

In the nearly 70 years of the United Nations, this is only the sixth time that the Security Council has met at a level like this. We convene such sessions to address the most urgent threats to peace and security. And I called this meeting because we must come together—as nations and an international community—to confront the real and growing threat of foreign terrorist fighters.

As I said earlier today, the tactic of terrorism is not new. …

What brings us together today, what is new is the unprecedented flow of fighters in recent years to and from conflict zones, including Afghanistan and the Horn of Africa, Yemen, Libya, and most recently, Syria and Iraq.

Our intelligence agencies estimate that more than 15,000 foreign fighters from more than 80 nations have traveled to Syria in recent years. Many have joined terrorist organizations such as al Qaeda's affiliate, the Nusrah Front, and ISIL, which now threatens people across Syria and Iraq. And I want to acknowledge and thank Prime Minister Abadi of Iraq for being here today.

In the Middle East and elsewhere, these terrorists exacerbate conflicts; they pose an immediate threat to people in these regions; and as we've already seen in several cases, they may try to return to their home countries to carry out deadly attacks. In the face of this threat, many of our nations—working together and through the United Nations—have increased our cooperation. Around the world, foreign terrorist fighters have been arrested, plots have been disrupted and lives have been saved.

Earlier this year at West Point, I called for a new Partnership to help nations build their capacity to meet the evolving threat of terrorism, including foreign terrorist fighters. And preventing these individuals from reaching Syria and then slipping back across our borders is a critical element of our strategy to degrade and ultimately destroy ISIL.

The historic resolution that we just adopted enshrines our commitment to meet this challenge. It is legally binding. It establishes new obligations that nations must meet. Specifically, nations are required to "prevent and suppress the recruiting, organizing,

transporting or equipping" of foreign terrorist fighters, as well as the financing of their travel or activities. Nations must "prevent the movement of terrorists or terrorist groups" through their territory, and ensure that their domestic laws allow for the prosecution of those who attempt to do so.

The resolution we passed today calls on nations to help build the capacity of states on the front lines of this fight—including with the best practices that many of our nations approved yesterday, and which the United States will work to advance through our Counterterrorism Partnerships Fund. This resolution will strengthen cooperation between nations, including sharing more information about the travel and activities of foreign terrorist fighters. And it makes clear that respecting human rights, fundamental freedoms and the rule of law is not optional—it is an essential part of successful counterterrorism efforts. Indeed, history teaches us that the failure to uphold these rights and freedoms can actually fuel violent extremism.

Finally, this resolution recognizes that there is no military solution to the problem of misguided individuals seeking to join terrorist organizations, and it, therefore, calls on nations to work together to counter the violent extremism that can radicalize, recruit, and mobilize individuals to engage in terrorism. Potential recruits must hear the words of former terrorist fighters who have seen the truth—that groups like ISIL betray Islam by killing innocent men, women and children, the majority of whom are Muslim.

* * * *

The words spoken here today must be matched and translated into action, into deeds -- concrete action, within nations and between them, not just in the days ahead, but for years to come. For if there was ever a challenge in our interconnected world that cannot be met by any one nation alone, it is this: terrorists crossing borders and threatening to unleash unspeakable violence. These terrorists believe our countries will be unable to stop them. The safety of our citizens demands that we do. And I'm here today to say that all of you who are committed to this urgent work will find a strong and steady partner in the United States of America.

* * * *

The U.S. Mission to the UN in New York issued a fact sheet on resolution 2178 on FTFs, which is excerpted below and available at *http://usun.state.gov/briefing/statements/232071.htm*.

---

* * * *

Resolution 2178 requires countries to take certain steps to address the FTF threat, including to prevent suspected FTFs from entering or transiting their territories and to implement legislation to prosecute FTFs. It also calls on states to undertake various steps to improve international cooperation in this field, such as by sharing information on criminal investigations, interdictions and prosecutions. In this resolution, for the first time ever, the Council underscores that Countering Violent Extremism (CVE) is an essential element of an effective response to the FTF phenomenon. Resolution 2178 also focuses existing UN counterterrorism bodies on the FTF

threat, providing a framework for long-term monitoring and assistance to countries in their efforts to address this threat.

Adopted under Chapter VII of the UN Charter, this resolution:

1. Reaffirms that Member States must comply with their human rights obligations when fighting terrorism and notes that a failure to do so contributes to radicalization.

2. Defines the term Foreign Terrorist Fighter as "individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict."

3. Expresses particular concern about the FTFs who have joined the Islamic State in Iraq and the Levant (ISIL), Al-Nusrah Front, and other groups associated with Al-Qaida.

4. Expresses concern over the use of the internet to incite others to commit terrorist acts and underlines the need to prevent terrorists from exploiting technology to incite support for terrorist acts, while at the same time respecting human rights and fundamental freedoms.

5. Notes the work of other multilateral bodies, including INTERPOL and other UN agencies, and the recent adoption by the Global Counterterrorism Forum (GCTF) of recommended good practices to respond to the FTF threat.

6. Demands FTFs disarm and cease all terrorist acts and participation in armed conflict.

7. Calls upon countries to require their airlines to provide advance passenger information to detect the travel of UN-listed terrorists.

Obligations

8. Requires countries to prevent and suppress recruiting, organizing, transporting, and equipping of FTFs, and the financing of FTF travel and activities.

9. Requires countries to have laws that permit the prosecution of:

- Their nationals and others departing their territories who travel or attempt to travel for terrorism purposes;
- The wilful provision or collection of funds by their nationals or in their territories with the intent or knowledge that they will be used to finance travel of FTFs;
- The wilful organization or facilitation by their nationals or in their territories of such travel.

10. Requires countries to prevent the entry or transit of individuals believed to be traveling for terrorism-related purposes.

International Cooperation

11. Calls upon countries to improve international, regional, and sub-regional cooperation to prevent FTF travel, including through increased information-sharing.

12. Highlights the need for countries to comply with their existing obligations regarding cooperation in terrorism-related criminal investigations and proceedings with respect to investigations and proceedings involving FTFs.

13. Encourages INTERPOL to intensify its efforts to respond to the FTF threat.

14. Calls upon countries to help each other build capacity to address the FTF threat and welcomes bilateral assistance to do so.

Countering Violent Extremism in Order to Prevent Terrorism

15. Underscores that Countering Violent Extremism (CVE) is an essential element of responding to the FTF threat.

16. Calls upon States to enhance CVE efforts and take steps to decrease the risk of radicalization to terrorism in their societies, such as engaging relevant local communities, empowering concerned groups of civil society, and adopting tailored approaches to countering FTF recruitment.

UN Engagement

17. Directs UN counter-terrorism bodies to focus attention on the FTF threat, enabling the international community to assess compliance with this resolution and to target assistance to those countries that need help enforcing its provisions.

18. Requests a report from the UN within 180 days to assess comprehensively the FTF phenomenon and recommend actions to enhance the response to the threat.

* * * *

c. UN General Assembly

On October 7, 2014, at the 69th UN General Assembly Sixth Committee discussion of Agenda Item 107: Measures to Eliminate International Terrorism, Carol Hamilton, Senior Advisor for the United States, delivered remarks on UN counterterrorism efforts. Ms. Hamilton's remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/234015.htm*.

_____

* * * *

The United States reiterates both its firm condemnation of terrorism in all its forms and manifestations as well as our commitment to the common fight to end terrorism. All acts of terrorism—by whomever committed—are criminal, inhumane and unjustifiable, regardless of motivation. An unwavering and united effort by the international community is required if we are to succeed in preventing these heinous acts. In this respect, we recognize the United Nations' critical role in mobilizing the international community, building capacity, and facilitating technical assistance to Member States in implementation of the United Nations Global Counter-Terrorism Strategy. We note in particular the Security Council's adoption of a number of recent resolutions: Resolution 2133 (on kidnapping for ransom), Resolution 2170 (to counter the Islamic State in Iraq and Levant, Al-Nusrah Front, and other al-Qa'ida-linked groups) and, just a few weeks ago, Resolution 2178 on Foreign Terrorist Fighters, which creates a new policy and legal framework for international action in response to the FTF threat.

With respect in particular to Resolution 2178, we would highlight that the 1267/1989 (Al-Qaida) Sanctions Committee, through its Monitoring Team, has been tasked to develop a comprehensive threat analysis of ISIL and other affiliates of AQ while the CTC, with the support of CTED, has been tasked to help identify gaps in member state capacities and good practices in addressing the FTF phenomenon. Resolution 2178 obligates states to criminalize certain activities related to the FTF threat. We know there is a large and growing number of states that are considering or have recently adopted new laws in this field. We believe it would be fruitful to exchange views with colleagues on implementation of Resolution 2178, including in order to enable those states that wish to obtain technical assistance. Resolution 2178 also highlights the

essential role that countering violent extremism must play in our common efforts to address not only the challenges posed by FTFs and ISIL, but by terrorism more broadly, and to prevent their radicalization and recruitment in the first place and effect the rehabilitation and reintegration of returnees. For these needs, we hope that CTED, based on the Monitoring Team's analysis of the threat, will facilitate the delivery of technical assistance to the most affected countries and UNCCT, along with the CTITF, will conduct the actual capacity building programs.

These resolutions are strong examples of the meaningful role the UN can play to address new challenges that arise in the fight against terrorism. We express our firm support for these UN efforts, as well as those of the Global Counterterrorism Forum and other multilateral bodies, civil society and non-governmental organizations, and regional and sub-regional organizations, aimed at developing practical tools to further the implementation of the UN CT framework. We call for improved coordination among UN entities and with external partners, including the GCTF and its related initiatives and platforms such as the International Institute for Justice and the Rule of Law in Malta and the Global Community Engagement and Resilience Fund, which advance practical implementation of the UN Global Counterterrorism Strategy.

We welcomed the fourth review of the UN Global CT Strategy this past June, particularly its emphasis on the need for greater implementation of the Strategy by states and its call for greater cooperation, coordination and coherence among United Nations entities. We strongly welcome the efforts of the United Nations to facilitate the promotion and protection of human rights and the rule of law while countering terrorism. We also recognize the role that victims of terrorism can play in countering violent extremism. Finally, we stress the need to improve border management and to use financial measures to counter terrorism.

We are pleased to note that our voluntary contributions to the UN Counterterrorism Implementation Task Force are for development of assistance and training. We are also pleased to provide funding support for the UN Center on Counter-Terrorism to deliver training and other practical capacity-building projects. We encourage other interested member states in joining us to help build the capacity of the UNCCT to allow it to provide assistance to member states across a range of issues addressed in the UN Strategy and relevant UNSCRs, including 2178.

Focusing here on treaty developments, we recognize the great success of the United Nations, thanks in large part to the work of this Committee, in developing 18 universal instruments that establish a thorough legal framework for combating terrorism. The achievements on this front are noteworthy. We have witnessed a dramatic increase in the number of states that have become party to these important counterterrorism conventions. For example, 170 states have become party to the Terrorist Financing Convention. The international community has also come together to conclude six new counterterrorism instruments, including a new convention on nuclear terrorism and updated instruments that cover new and emerging threats to civil aviation, maritime navigation, and the protection of nuclear material.

The United States recognizes that while the accomplishments of the international community in developing a robust legal counterterrorism regime are significant, there remains much work to be done. The 18 universal counterterrorism instruments are only effective if they are widely ratified and implemented. In this regard, we fully support efforts to promote ratification and implementation of these instruments. We draw particular attention to the six instruments concluded over the past decade – the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism, the 2005 Amendment to the Convention on the Physical Protection of Nuclear Material, the 2005 Protocols to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, and the 2010

Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation and its Protocol. The work of the international community began with the negotiation and conclusion of those instruments. But that work will only be completed when those instruments are widely ratified and fully implemented.

The United States is advancing in its own efforts to ratify these instruments. We have been working closely with the U.S. Congress to pass legislation that would allow the United States to ratify the Nuclear Terrorism Convention, the CPPNM Amendment, and the SUA Protocols. As we undertake efforts to ratify these recent instruments, we urge other states not yet party to do likewise.

And as we move forward with our collective efforts to ratify and implement these instruments, the United States remains willing to work with other states to build upon and enhance the counterterrorism framework. Concerning the Comprehensive Convention on International Terrorism, we recognize that, despite best efforts, negotiations remain at an impasse on current proposals. We will listen carefully to the statements of other delegates at this session as we continue to grapple with these challenging issues.

* * * *

d. U.S. actions against support for terrorists

(1) Foreign Terrorist Fighters

On September 10, 2014, representatives of the U.S. Department of State and Department of Homeland Security testified before the Homeland Security Subcommittee of the U.S. House of Representatives. The testimony of Hillary Batjer Johnson on behalf of the State Department focused on measures taken to address the problem of foreign fighters and their participation in terrorist activities. Ms. Johnson's testimony before the subcommittee is excerpted below and available at www.state.gov/j/ct/rls/rm/2014/231462.htm.

---

* * * *

We have seen in Syria a trend of foreign fighter travel for the purposes of participating in the conflict—largely driven on an unprecedented scale by global connectivity that is available through the internet and social media. ISIL operates an extremely sophisticated propaganda machine and disseminates timely, high-quality media content on multiple platforms, including on social media. We have seen ISIL use a range of media to attempt to aggrandize its military capabilities, including showcasing the executions of captured soldiers, and evidence of consecutive battlefield victories resulting in territorial gains. More recently, the group's supporters have sustained this momentum on social media by encouraging attacks in the United States and against U.S. interests in retaliation for our airstrikes. ISIL has also used its propaganda campaign to draw foreign fighters to the group, including many from Western countries.

It is difficult to provide a precise figure of the total number of foreign fighters in Syria, though the best available estimates indicate that approximately 12,000 fighters from at least 50 countries—including over 100 U.S. persons—may have traveled to Syria to fight for ISIL or al-

Nusrah Front since the beginning of the conflict. These fighters not only exacerbate regional instability, but create real threats to U.S. interests and our allies. We are working closely with countries affected by the foreign fighter problem set to counter the threat these fighters pose. As we have built a common picture of the threat with our allies, so, too, we continue our efforts to build consensus around joint initiatives and complementary approaches to sustain a broad and comprehensive approach.

Securing U.S. Borders

The Department of State works closely with the Department of Homeland Security (DHS) to support its mission in protecting the United States by promoting effective aviation and border security screening with our foreign partners through enhanced information sharing. For example, an important effort in our counterterrorism work is Homeland Security Presidential Directive Six (HSPD-6), a post-9/11 White House initiative. Through HSPD-6, the State Department works with the Terrorist Screening Center to negotiate the exchange of identities of known or suspected terrorists with foreign partners to enhance our mutual border screening efforts.

The Terrorist Screening Center implements these agreements with foreign partners. These agreements allow partners to namecheck incoming flights to their countries, which helps us deter terrorist travel, creating an extra layer of security for the United States.

HSPD-6 agreements or arrangements are a pre-requisite to participate in the Visa Waiver Program (VWP). To date, we have forty-three such agreements in place which includes VWP partners, and we continue to actively seek out new partners.

The Department of State also works closely with its partners at the Department of Homeland Security to strengthen global aviation security by engaging foreign partners in bolstering aviation screening at last point of departure (LPD) airports with direct flights to the United States to identify and prevent known or suspected terrorists from boarding commercial flights.

Foreign Terrorist Fighters

Additionally, the Department of State is leading interagency efforts to engage with foreign partners to prevent in the first place and, where possible, to interdict foreign extremist travel to Syria. We strongly believe that a whole-of-government approach is the only way to truly address the threat, and we work closely with our interagency colleagues to facilitate comprehensive approaches. This work includes facilitating information exchanges with foreign partners, building partner capacity, and developing shared objectives focused on addressing the foreign fighter threat. Ambassador Robert Bradtke, Senior Advisor for Partner Engagement on Syria Foreign Fighters, leads this work for the State Department and has met with officials from European Union member countries, North Africa, the Gulf, the Balkans, and East Asia and Pacific, to discuss and examine our shared serious concerns about the foreign terrorist fighter threat. Ambassador Bradtke and other Department counterparts have led sustained efforts to urge reform and build capacity for whole-of-government and whole-of-society approaches to counter this threat, notably encouraging information sharing and border security, legal reform and criminal justice, and countering violent extremism.

Important progress has been made, but more work remains. Countries in the Balkans recently have adopted or are considering more comprehensive counterterrorism laws. In the Gulf, countries such as Kuwait, Qatar, and Saudi Arabia have increased penalties related to terrorist financing and several have established the necessary architecture to enforce their

counterterrorism laws more effectively, such as Kuwait's newly created Financial Intelligence Unit and Qatar's establishment of a charity abuse review board.

Some of our partners have implemented legal reforms aimed more directly at countering foreign terrorist fighters. For example, traveling overseas to participate in combat has been newly criminalized in the Balkans, Canada, and Jordan. The United Kingdom and Indonesia have banned participation in groups such as ISIL, while Malaysia has publicly opposed ISIL and its activities.

Countries have taken a variety of steps under existing laws and regulations to inhibit foreign fighter's resources or travel. Canada, New Zealand, Australia, and eight European countries have the authority to revoke the passports of suspected foreign fighters.

The European Council recently called for the accelerated implementation of EU measures in support of Member States to combat foreign fighters, including finalizing an EU Passenger Name Record (PNR) proposal by the end of this year, and increasing cooperation with partner nations such as the United States to strengthen border and aviation security in the region.

In all our efforts with our partners, we stress the importance of—and facilitate implementation of – adhering to a rule of law framework. We are encouraged by these and other reforms to counter the foreign fighter threat. While we have seen progress, our efforts must be sustained and intensified. We will continue to work closely with partners, particularly those in the Middle East, North Africa, and Europe in the coming months to enhance cooperation and build on efforts to date.

Multilateral Initiatives and the Global Counterterrorism Forum

We are also working the foreign terrorist fighter issue actively on the multilateral front. The week of September 24, President Obama will chair a United Nations Security Council (UNSC) Summit on the rising threat posed by foreign terrorist fighters, no matter their religious ideology or country of origin. This rare UNSC leader-level session is the first U.S. -hosted Head of Government-level UNSC session since President Obama led a UNSC Summit on non-proliferation in September 2009, and it presents a unique opportunity to demonstrate the breadth of international consensus regarding the foreign terrorist fighter threat and to build momentum for policy initiatives on this topic at home and abroad. In addition to a briefing from UN Secretary-General Ban Ki-Moon and brief remarks from leaders of all 15 UNSC members, this summit is expected to adopt a U.S. -drafted UNSC Resolution during the session.

That same week, Secretary Kerry and Turkish Foreign Minister Cavusoglu will co-chair a Global Counterterrorism Forum (GCTF) ministerial meeting, where GCTF members will adopt the first-ever set of global good practices to address the foreign terrorist fighter threat (FTF) and launch a working group dedicated to working with GCTF members and non-members alike to mobilize resources and expertise to advance their implementation. The good practices cover the four central aspects of the phenomenon: (1) radicalizing to violent extremism; (2) recruitment and facilitation; (3) travel and fighting; and, (4) return and reintegration. They are also intended to shape bilateral or multilateral technical or other capacity-building assistance that is provided in this area. This effort will allow our practitioners and other experts to continue to share expertise and broaden skills in addressing the FTF challenge.

Conclusion

We remain deeply supportive of DHS' efforts to protect the U.S. homeland and make every effort to support its work through diplomatic engagement.

The State Department is involved in an array of activities to counter terrorism and the phenomenon of foreign terrorist fighters, such as capacity building, countering terrorist finance,

and countering violent extremism, my State Department colleagues would be happy to brief Congress about these lines of effort at another time.

* * * *

(2) U.S. targeted sanctions implementing UN Security Council resolutions

See Chapter 16.A.4.b.

(3) Foreign terrorist organizations

(i) New designations

In 2014, the Department of State announced the Secretary of State's designation of three additional organizations and their associated aliases as Foreign Terrorist Organizations ("FTOs") under § 219 of the Immigration and Nationality Act: Ansar Bayt al-Maqdis (79 Fed. Reg. 19,958 (Apr. 10, 2014)), see also April 9, 2014 State Department media note, available at *www.state.gov/r/pa/prs/ps/2014/04/224566.htm*; Al-Nusrah Front (79 Fed. Reg. 27, 972 (May 15, 2014)); Mujahidin Shura Council in the Environs of Jerusalem (MSC) (79 Fed. Reg. 49,368 (Aug. 20, 2014)); See Chapter 16.A.4.b. for a discussion of the simultaneous designation of these entities pursuant to Executive Order 13224.

The Department amended the designation of al-Qa'ida in Iraq ("AQI") to include multiple new aliases—including Islamic State of Iraq and the Levant ("ISIL"), Islamic State of Iraq and Syria ("ISIS"), Daesh, and others—and to remove the alias of Al-Nusrah Front ("ANF") (which was designated separately on the same day) because that organization was found to no longer be a part of al-Qa'ida in Iraq. 79 Fed. Reg. 27,972 (May 15, 2014). A May 14, 2014 State Department media note, available at *www.state.gov/r/pa/prs/ps/2014/05/226067.htm*, explains the amendment:

> These adjustments do not represent a change in policy. Both ISIL and ANF have been designated domestically for several months. In December 2012, the Department of State amended the FTO and E.O. 13224 designations of AQI to include ANF as an alias. Since that amendment occurred, differences over management and tactics have led to an increase in violence between the two groups. Tension peaked in early 2014, when al-Qa'ida (AQ) leader, Ayman al-Zawahiri, released a statement dismissing ISIL from AQ. Therefore, we have amended the AQI designation to better reflect the change in status of both ISIL and ANF. We review our designations regularly and, as needed, make adjustments to ensure we remain current with nomenclature and other changes.

U.S. financial institutions are required to block funds of designated FTOs or their agents within their possession or control; representatives and members of designated FTOs, if they are aliens, are inadmissible to, and in some cases removable from, the United States; and U.S. persons or persons subject to U.S. jurisdiction are subject to criminal prohibitions on knowingly providing "material support or resources" to a designated FTO. 18 U.S.C. § 2339B. See www.state.gov/j/ct/rls/other/des/123085.htm for background on the applicable sanctions and other legal consequences of designation as an FTO.

(ii) Reviews of FTO designations

During 2014, the Secretary of State continued to review designations of entities as FTOs consistent with the procedures for reviewing and revoking FTO designations in § 219(a) of the Immigration and Nationality Act, as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 ("IRTPA"), Pub. L. No. 108-458, 118 Stat. 3638. See *Digest 2005* at 113–16 and *Digest 2008* at 101–3 for additional details on the IRTPA amendments and review procedures. The Secretary reviewed each FTO individually and determined that the circumstances that were the basis for the designations of the following FTOs have not changed in such a manner as to warrant revocation of the designations and the national security of the United States did not warrant revocation: Lashkar I Jhangvi ("LJ") (79 Fed. Reg. 7274 (Feb. 6, 2014)), see also February 6, 2014 State Department media note, available at www.state.gov/r/pa/prs/ps/2014/02/221398.htm; Irish Republican Army (79 Fed. Reg. 23,041 (Apr. 25, 2014)); Harakat ul-Jihad-i-Islami/Bangladesh (79 Fed. Reg. 25,170 (May 2, 2014)); al-Qa'ida in the Islamic Maghreb (79 Fed. Reg. 27,030 (May 12, 2014)); Lashkar-e-Tayyiba (79 Fed. Reg. 36,366 (June 26, 2014)); Shining Path (79 Fed. Reg. 46,297 (Aug. 7, 2014)); Harakat ul-Mujahidin (79 Fed. Reg. 46,499 (Aug. 8, 2014)); Asbat al-Ansar (79 Fed. Reg. 47,513 (Aug. 13, 2014)); Basque Fatherland and Liberty (79 Fed. Reg. 65,474 (Nov. 4, 2014)); National Liberation Army (79 Fed. Reg. 65,474 (Nov. 4, 2014)); Palestinian Islamic Jihad (79 Fed. Reg. 75,227 (Dec. 17, 2014)).

On July 1, 2014, the Secretary determined that the circumstances that were the basis for the designation of the United Self-Defense Forces of Colombia as an FTO have changed in such a manner as to warrant revocation of the designation. 79 Fed. Reg. 41,349 (July 15, 2014).

(4) Rewards for Justice Program

On March 15, 2014, the State Department announced reward offers under the Rewards for Justice Program for information on three leaders of the al-Shabaab terrorist organization, based in Somalia. See March 15, 2014 media note, available at www.state.gov/r/pa/prs/ps/2014/03/223518.htm. As stated in the media note, the Department authorized rewards of up to $3 million each for information leading to the

arrest or conviction of Abdikadir Mohamed Abdikadir, Jafar, and Yasin Kilwe. For background on the Rewards for Justice program and its enhancements under the USA PATRIOT Act, see the Rewards for Justice website, *www.rewardsforjustice.net*, and Digest *2001* at 932-34. Excerpts of the March 15, 2014 media note regarding the three al-Shabaab members appear below.

* * * *

Since 2006, al-Shabaab has killed thousands of civilians, aid workers, and peacekeepers in Somalia, Uganda, and Kenya. Al-Shabaab claimed responsibility for the July 11, 2010 suicide bombings in Kampala, Uganda, which killed more than 70 people, including one American citizen. Al-Shabaab also claimed responsibility for the September 21-24, 2013, terrorist attack against the Westgate shopping mall in Nairobi that left more than 60 people dead and nearly 200 wounded.

Al-Shabaab's terrorist activities pose a threat to the stability of East Africa and to the national security interests of the United States. The U.S. Secretary of State named al-Shabaab a Foreign Terrorist Organization on March 18, 2008. In February 2012, al-Shabaab and the al-Qaida terrorist network jointly announced they had formed an alliance.

Abdikadir, better known as Ikrima, was born in 1979 in Kenya to Somali parents. Ikrima reportedly has medium-length hair and has worn a thick moustache. He is missing three fingers on his left hand. He has coordinated the recruitment of Kenyan youth into al-Shabaab and commanded a force of al-Shabaab's Kenyan fighters in Somalia.

Jafar, also known as Amar, is an al-Shabaab facilitator and has served as Ikrima's deputy, and is reportedly missing one eye.

Yasin Kilwe is al-Shabaab's emir for Puntland in northern Somalia. Kilwe was officially appointed al-Shabaab's leader in the region by Al-Shabaab emir Ahmed Abdi aw-Godane. Kilwe pledged his allegiance to al-Shabaab and al-Qaida in February 2012.

* * * *

On April 2, 2014, the State Department announced reward offers for information on key leaders of another terrorist organization, the Revolutionary People's Liberation Party/Front ("DHKP/C"). See April 2, 2014 State Department media note available at *www.state.gov/r/pa/prs/ps/2014/04/224316.htm*. The Department authorized rewards of up to $3 million each for information leading to the location of three individuals: Musa Asoglu, Zerrin Sari, and Seher Demir Sen. The media note provides the following background on the terrorist organization and these three key members:

DHKP/C was created in 1994 when its predecessor group, Devrimci Sol or Dev Sol, splintered. The group has targeted U.S. interests, including U.S. military and diplomatic personnel and facilities, NATO personnel and facilities, and Turkish targets since the 1990s. The U.S. Department of State designated DHKP/C a

Foreign Terrorist Organization on October 8, 1997. In February 2013, a suicide bomber affiliated with the group attacked the U.S. Embassy in Ankara, killing a Turkish security guard.

Musa Asoglu is a member of DHKP/C's central committee, the group's top decision-making body, and is believed to lead the group's financial affairs and fundraising activities in Europe. Asoglu joined DHKP/C in the 1990s while a resident of the Netherlands. He reportedly inherited leadership of the group after its founding leader, Dursun Karatas, died in 2008.

Zerrin Sari is the widow of DHKP/C founder Karatas and a member of DHKP/C's central committee. Sari is believed to currently reside in Belgium, the Netherlands, or Germany.

Seher Demir Sen participated in Dev Sol in the 1980s and joined DHKP/C after it formed in 1994. She currently serves on DHKP/C's central committee. Sen was last known to be residing in Greece, but may have left the country due to targeted Greek counterterrorism and law enforcement activity against DHKP/C. Her current whereabouts are unconfirmed.

On October 14, 2014, the State Department announced rewards under the Rewards for Justice program for information on key leaders of the Al-Qaida in the Arabian Peninsula ("AQAP") terrorist organization. The October 14, 2014 media note making the announcement is available at *www.state.gov/r/pa/prs/ps/2014/10/232932.htm*. The Department authorized rewards of up to $10 million for information leading to the location of Nasir al-Wahisi and up to $5 million each for information leading to the locations of Qasim al-Rimi, Othman al-Ghamdi, Ibrahim Hassan Tali al-Asiri, Shawki Ali Ahmed Al-Badani, Jalal Bala'idi, Ibrahim al-Rubaysh, and Ibrahim al-Banna. Further background on AQAP and these eight individuals can be found in the excerpts below from the October 14, 2014 media note.

_____

* * * *

AQAP was formed in January 2009 by Yemeni and Saudi terrorists under the leadership of Nasir al-Wahishi, who had headed AQAP's predecessor group Al-Qa'ida in Yemen.

AQAP has launched numerous high-profile terrorist attacks against the Yemeni Government, and U.S. and other foreign interests. In March 2009, an AQAP suicide bomber killed four South Korean tourists and their Yemeni guide. A few months later, AQAP dispatched Umar Farouk Abdulmutallab, who attempted to detonate an explosive device aboard Northwest Airlines Flight 253 over the continental United States on December 25, 2009. In October 2010, AQAP claimed responsibility for a foiled plot to send explosive-laden packages to the United States via cargo plane. To spread its extremist propaganda, AQAP launched an English-language magazine called Inspire in 2010 and the Arabic-language al-Madad News Agency in 2011. AQAP, operating under the alias Ansar al-Sharia, carried out a May 2012 suicide bombing in Sana'a that killed more than 100 people. In 2013, more than 20 U.S. embassies were temporarily closed in response to a threat associated with AQAP.

On January 19, 2010, the Secretary of State designated AQAP as a Foreign Terrorist Organization.

Nasir al-Wahishi is AQAP's top leader and is responsible for approving AQAP targets, recruiting new members, allocating resources, and directing AQAP operatives to conduct attacks. In 2013, Al-Qa'ida leader Ayman al-Zawahiri named him as his deputy.

Qasim al-Rimi is a senior AQAP military commander who has played an important role in recruiting AQAP operatives.

Othman al-Ghamdi has helped raise funds and stockpile weapons for the group.

Ibrahim Hassan Tali al-Asiri is AQAP's primary bomb maker who gained notoriety for recruiting his younger brother for a failed suicide bomb attack against Saudi Prince Muhammed bin Nayif in August 2009.

Shawki Ali Ahmed Al-Badani is an AQAP leader and operative who played a key role in a plan for a major attack that led the United States to close more than 20 diplomatic posts in the Middle East and Africa in the summer of 2013.

Jalal Bala'idi is an AQAP regional emir who was involved in 2013 with planning bomb attacks on various Western diplomatic facilities and personnel.

Ibrahim al-Rubaysh is a senior AQAP Sharia official and advisor who provides the justification for the group's attacks and participates in attack planning.

Ibrahim al-Banna is a founding member of AQAP and has served as the group's chief of security.

* * * *

2. Narcotics

a. Majors list process

(1) International Narcotics Control Strategy Report

On March 4, 2013, the Department of State submitted the 2013 International Narcotics Control Strategy Report ("INCSR"), an annual report submitted to Congress in accordance with § 489 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2291h(a). The report describes the efforts of key countries to attack all aspects of the international drug trade in calendar year 2012. Volume 1 of the report covers drug and chemical control activities and Volume 2 covers money laundering and financial crimes. The report is available at *www.state.gov/j/inl/rls/nrcrpt/2013/*.

(2) Major drug transit or illicit drug producing countries

On September 15, 2014, President Obama issued Presidential Determination 2014-15, "Memorandum for the Secretary of State: Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2015." 79 Fed. Reg. 56,625 (Sept. 22, 2014). In this annual determination, the President named Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic,

Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela as countries meeting the definition of a major drug transit or major illicit drug producing country. A country's presence on the "Majors List" is not necessarily an adverse reflection of its government's counternarcotics efforts or level of cooperation with the United States. No new countries were added to the list in 2014. The President designated Bolivia, Burma, and Venezuela as countries that have failed demonstrably to adhere to their international obligations in fighting narcotrafficking. Simultaneously, the President determined that support for programs to aid Burma and Venezuela is vital to the national interests of the United States, thus ensuring that such U.S. assistance would not be restricted during fiscal year 2015 by virtue of § 706(3) of the Foreign Relations Authorization Act, Fiscal Year 2003, Pub. L. No. 107-228, 116 Stat. 1424.

b. Interdiction assistance

During 2013 President Obama again certified, with respect to Colombia (Daily Comp. Pres. Docs. , 2013 DCPD No. 00564, p. 1, Aug. 9, 2013) and Brazil (Daily Comp. Pres. Docs. , 2013 DCPD No. No 00696, p. 1, Oct. 10, 2013), that (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) the country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft. President Obama made his determinations pursuant to § 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended, 22 U.S.C. §§ 2291–4, following a thorough interagency review. For background on § 1012, see *Digest 2008* at 114.

3. Trafficking in Persons

a. Trafficking in Persons report

On June 20, 2014, the Department of State released the 2014 Trafficking in Persons Report pursuant to § 110(b)(1) of the Trafficking Victims Protection Act of 2000 ("TVPA"), Div. A, Pub. L. No. 106-386, 114 Stat. 1464, as amended, 22 U.S.C. § 7107. The report covers the period April 2013 through March 2014 and evaluates the anti-trafficking efforts of countries around the world. Through the report, the Department determines the ranking of countries as Tier 1, Tier 2, Tier 2 Watch List, or Tier 3 based on an assessment of their efforts with regard to the minimum standards for the elimination of trafficking in persons as set out by the TVPA, as amended. The 2014 report lists 23 countries as Tier 3 countries, making them subject to certain restrictions on assistance in the absence of a Presidential national interest waiver. For details on the

Department of State's methodology for designating states in the report, see *Digest 2008* at 115–17. The report is available at www.state.gov/j/tip/rls/tiprpt/2014/index.htm. Chapter 6.C.3.b. discusses the determinations relating to child soldiers.

In a briefing upon the release of the 2014 report, available at www.state.gov/j/tip/rls/rm/2014/228067.htm, Luis CdeBaca, Ambassador-at-Large for the State Department's Office To Monitor and Combat Trafficking in Persons, explained some of the findings in the 2014 report. Secretary Kerry also delivered remarks upon release of the report, which are available at www.state.gov/secretary/remarks/2014/06/228083.htm.

b. Presidential determination

Consistent with § 110(c) of the Trafficking Victims Protection Act, as amended, 22 U.S.C. § 7107, the President annually submits to Congress notification of one of four specified determinations with respect to "each foreign country whose government, according to [the annual Trafficking in Persons report]—(A) does not comply with the minimum standards for the elimination of trafficking; and (B) is not making significant efforts to bring itself into compliance." The four determination options are set forth in § 110(d)(1)–(4).

On September 18, 2014, President Obama issued a memorandum for the Secretary of State, "Presidential Determination With Respect to Foreign Governments' Efforts Regarding Trafficking in Persons." 79 Fed. Reg. 57,699 (Sept. 26, 2014). The President's memorandum conveys determinations concerning the 23 countries that the 2014 Trafficking in Persons Report lists as Tier 3 countries. See Chapter 3.B.3.a. *supra* for discussion of the 2014 report.

The Trafficking Victims Protection Act further requires that the President's notification be accompanied by a certification by the Secretary of State regarding certain types of foreign assistance ("covered assistance") that "no [such covered] assistance is intended to be received or used by any agency or official who has participated in, facilitated, or condoned a severe form of trafficking in persons." Secretary Kerry signed the required certification as to all 23 countries place on the Tier 3 in the 2014 Report on August 28, 2014. Prior to obligating or expending covered assistance, relevant bureaus in the State Department are required to take appropriate steps to ensure that all assistance is provided in accordance with the Secretary's certification.

4. Money Laundering

On July 22, 2014, the Department of the Treasury, Financial Crimes Enforcement Network ("FinCEN") issued notice of its finding under § 311 of the USA PATRIOT Act, Pub. L. 107-56, that FBME Bank Ltd. is a financial institution operating outside the United States that is of primary money laundering concern. 79 Fed. Reg. 42,639 (July 22, 2014). Based on this finding, FinCEN also issued a notice of proposed rulemaking under

§ 311. 79 Fed. Reg. 42,486 (July 22, 2014). The rule proposed would impose the fifth special measure (31 U.S.C. 5318A(b)(5)) against FBME. The fifth special measure prohibits or conditions the opening or maintaining of correspondent or payable-through accounts for FBME. Excerpts below from the notice of finding explain the determination with regard to FBME (with footnotes omitted).

* * * *

III. The Extent To Which FBME Has Been Used To Facilitate or Promote Money Laundering In or Through Cyprus and Tanzania

1. FBME Facilitates Money Laundering, Terrorist Financing, Transnational Organized Crime, Fraud Schemes, Sanctions Evasion, Weapons Proliferation, Corruption by Politically-Exposed Persons, and Other Financial Crimes

FBME facilitated a substantial volume of money laundering through the Bank for many years. FBME is used by its customers to facilitate money laundering, terrorist financing, transnational organized crime, fraud, sanctions evasion, and other illicit activity internationally and through the U.S. financial system. FBME has systemic failures in its AML controls that attract high-risk shell companies, that is, companies formed for the sole purpose of holding property or funds and that do not engage in any legitimate business activity. FBME performs a significant volume of transactions and activities that have little or no transparency and often no apparent legitimate business purpose.

Through relationships developed by FBME's management since at least 2006, as well its large shell company customer base, FBME facilitates the activities of international terrorist financiers, organized crime figures, and money launderers. For example, since at least early 2011, the head of an international narcotics trafficking and money laundering network has used shell companies' accounts at FBME to engage in financial activity. In late 2012, the head of the same international narcotics trafficking and money laundering network continued to express interest in conducting financial transactions through accounts with FBME in Cyprus. Separately, in 2008, an FBME customer received a deposit of hundreds of thousands of dollars from a financier for Lebanese Hezbollah. FBME also facilitates financial activity for transnational organized crime. As of 2008, a financial advisor for a major transnational organized crime figure who banked entirely at FBME in Cyprus maintained a relationship with the owners of FBME.

FBME facilitated transactions for entities that perpetrate fraud and cybercrime against victims from around the world, including in the United States. For example, in 2009, FBME facilitated the transfer of over $100,000 to an FBME account involved in a High Yield Investment Program ("HYIP") fraud against a U.S. person. In July 2012, the FBME customer operating the alleged HYIP was indicted in the United States District Court for the Northern District of Ohio for wire fraud and money laundering related to the HYIP fraud. FBME has processed payments for cybercrime networks. In September 2010, FBME facilitated the unauthorized transfer of over $100,000 to an FBME account from a Michigan-based company that was the victim of a phishing attack. Several FBME accounts have been the recipients of the proceeds of cybercriminal activity against U.S.victims. For example, in October 2012, an FBME account holder operating as a shell company was the intended beneficiary of over $600,000 in wire transfers generated from a fraud scheme, the majority of which came from a victim in California.

FBME's offshore banking business allows sanctioned entities to circumvent sanctions imposed by the International Emergency Economic Powers Act ("IEEPA"). …For example, at least one FBME customer is a front company for a U.S.-sanctioned Syrian entity, the Scientific Studies and Research Center ("SSRC"), which has been designated as a proliferator of weapons of mass destruction. The SSRC front company used its FBME account to process transactions through the U.S. financial system. This SSRC front company also shared a Tortola, British Virgin Islands ("BVI") address with at least 111 other shell companies, including at least one other additional FBME customer that is subject to international sanctions.

FBME solicits and is recognized by its high-risk customers for its ease of use. FBME advertises the Bank to its potential customer base as willing to facilitate the evasion of AML regulations. Separately, FBME is recognized for the ease of its account creation. In September 2013, FBME's offshore bank account services were featured prominently on a Web site that facilitates the formation of offshore entities. FBME is also popular with online gamblers, particularly U.S. gamblers that seek to engage in unlawful internet gambling. One Web site that encourages the opening of offshore bank accounts to gamble online notes that FBME in Cyprus is "[a]nother Europe-based bank [we've] found particularly easy to deal with."

In October 2011, the Department of Justice ("DOJ") filed civil forfeiture complaints against approximately $70. 8 million in real and personal property alleged to be the proceeds of foreign corruption offenses perpetrated by the President of Equatorial Guinea, Teodoro Obiang's son and his associates and laundered through the United States. Subsequently, between December 2011 and July 2012, the Treasury of Equatorial Guinea wired over $47 million to several Cypriot banks and entities in a pattern of transactions that was identified as being consistent with the allegations in the DOJ complaint. This included $7. 2 million wired to a British shell company using an FBME account.

2. FBME's Weak AML Controls Encourage Use of the Bank by Shell Companies and Allow Its Customers To Perform a Significant Volume of Obscured Transactions and Activities Through the U.S. Financial System

FBME accesses the U.S. financial system through both direct and indirect correspondent accounts. In 2009, one U.S. financial institution terminated its banking relationship with FMBE based on money laundering concerns. The volume of suspicious wire activity conducted by FBME customers through the U.S. financial system, however, remains significant. In just the year from April 2013 through April 2014, FBME conducted at least $387 million in wire transfers through the U.S. financial system that exhibited indicators of high-risk money laundering typologies, including widespread shell company activity, short-term "surge" wire activity, structuring, and high-risk business customers.

FBME has a significant number of shell company customers nominally based in Cyprus and in other high-risk jurisdictions. Wire transfers related to suspected shell company activities accounted for hundreds of millions of dollars of FBME's financial activity between 2006 and 2014. …

FBME customers, including its many shell company customers, have frequently used FBME's Cyprus address to conduct collectively tens of millions of dollars of transactions. From July 2007 to February 2013, at least 71 entities used FBME's Cyprus address to conduct transactions through the U.S. financial system. Although there may be rare occasions when use of the bank's address as a bank customer's address of record is legitimate, such a practice is highly unusual and indicative of the bank's potential complicity in its customers' illicit activities.

* * * *

5. Organized Crime

a. Transnational Organized Crime Rewards Program

As discussed in *Digest 2013* at 51, the U.S. government expanded its rewards program in 2013 to extend to information about individuals involved in transnational organized crime. The Transnational Organized Crime ("TOC")(Rewards Program was the result and is managed by the U.S. Department of State's Bureau of International Narcotics and Law Enforcement Affairs in coordination with U.S. federal law enforcement agencies.

On April 29, 2014, the State Department announced the offer of a reward of up to $5 million through the TOC Rewards Program for information leading to the arrest and/or conviction of Chinese weapons proliferator Li Fangwei, also known as Karl Lee. See April 29, 2014 media note, available at www.state.gov/r/pa/prs/ps/2014/04/225338.htm. The media note provided background on Li Fangwei:

> Li Fangwei previously was sanctioned by the United States for his alleged role as a principal supplier to Iran's ballistic missile program. According to the Indictment, he controls a large network of front companies and allegedly uses this network to move millions of dollars through U.S. -based financial institutions to conduct business in violation of the International Emergency Economic Powers Act (IEEPA) and the Weapons of Mass Destruction Proliferators Sanctions Regulations, which prohibit such financial transactions. Li Fangwei is also charged with conspiring to commit wire fraud and bank fraud, a money laundering conspiracy, and two separate counts of wire fraud in connection with such illicit transactions.
>
> …
>
> Today's announcement is taken in coordination with other U.S. agencies taking action against Li Fangwei. The U.S. Department of Justice unsealed an indictment against Li Fangwei on charges including conspiracy to commit money laundering, bank fraud, and wire fraud. The U.S. Department of the Treasury's Office of Foreign Assets Control also added eight of Li Fangwei's front companies to its List of Specially Designated Nationals and Blocked Persons, and the U.S. Department of Commerce announced today the addition of nine of his China-based suppliers to its Entity List.
>
> More information about Li Fangwei is available on the Transnational Organized Crime Rewards Program website at www.state.gov/tocrewards. …

On November 18, 2014, the State Department announced TOC Rewards Program offers for information leading to the arrest and/or conviction of alleged Romanian Internet fraud conspirators Nicolae Posescu and Dumitru Daniel Bosogioiu. See

November 18, 2014 media note, available at www.state.gov/r/pa/prs/ps/2014/11/234168.htm.

b. Sanctions Program

See Chapter 16 for a discussion of sanctions related to transnational organized crime.

c. United Nations

On October 9, 2014, William R. Brownfield, Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, addressed the Third Committee of the UN General Assembly. His remarks focus on the related challenges of narcotics and transnational organized crime. Secretary Brownfield's remarks are available in full at www.state.gov/j/inl/rls/rm/2014/232824.htm, and excerpted below.

_____

* * * *

Our starting point is the international legal framework: the three drug control conventions, the UN Convention against Transnational Organized Crime, and the UN Convention against Corruption. These treaties provide a resilient framework for establishing common definitions of illicit behavior; ensuring compatibility of legal standards and criminal justice responses; and promoting stronger cross-border cooperation. The authors of these conventions wisely left each treaty flexible in order to help governments address new and emerging threats, like wildlife trafficking and cybercrime. As threats and our responses evolve, the international community should show tolerance as governments try new policies within their borders to address specific national concerns, provided they promote the aims of the conventions.

* * * *

The current international framework is designed to help national governments advance the core objectives of protecting the health of citizens and the safety of communities. Translating these aspirations into effective action will be our charge at the UN General Assembly Special Session on Drugs in 2016.

The UNGASS is a rare opportunity for stake-holders to reflect on the drug issue. We look forward to an open, inclusive debate that includes civil society, the private sector and relevant UN agencies. Member States, through the UN Commission on Narcotic Drugs, have established an effective plan to prepare for the UNGASS. The United States urges the UN General Assembly to adopt this plan without amendment.

We also have a responsibility to work across borders to dismantle, disrupt, and eliminate transnational criminal enterprises. All links in the criminal justice continuum—police, courts, and corrections—must be addressed. Sovereign governments bear the bulk of this burden. But we also have a responsibility to help each other. The UN Office on Drugs and Crime is an

important partner in these efforts through its work implementing technical assistance projects around the world.

Civil society also plays a critical role—as first-line responders, advocates and assistance providers. Next year, we look forward to the Thirteenth UN Congress on Crime Prevention and Criminal Justice. This Congress will be a valuable venue at which Member States and civil society exchange research, experience, and perspectives.

Drugs, crime and corruption are global issues that require global responses. The international frameworks are an essential element. They are force multipliers, forging operational cooperation and helping us learn from each other. Only though collective effort can we advance our goal of making our citizens and communities safe.

* * * *

The Seventh Session of the Conference of the Parties to the UN Convention Against Transnational Organized Crime convened in Vienna in October 2014. The U.S. opening statement at the conference, delivered by Deputy Assistant Secretary of State M. Brooke Darby on October 6, 2014, is excerpted below and available at *www.state.gov/j/inl/rls/rm/2014/232590.htm*.

* * * *

Mr. Chair, this year marks the fourteenth anniversary of the signing of the UNTOC in New York. At its core, the UNTOC helps facilitate important cooperation among States Parties in serious criminal cases, and has been invaluable for the United States to provide assistance in cases involving emerging crimes. I am pleased to report that since the United States became a party, we have successfully used the UNTOC as the basis for international cooperation over 250 times with more than 55 different countries, including over 150 times during the past two years alone. These instances include requests for bank and corporate records, computer documents, DNA evidence, witness interviews, surveillance, and testimony for use in court. The UNTOC has also proven valuable in our efforts to pursue the extradition of persons charged with serious criminal offenses in the United States. Our use of the UNTOC, in combination with our bilateral treaties, has led to the return of nearly 30 fugitives to face prosecution in the United States.

We now have over a decade of experience utilizing the Convention and its Protocols. This week, we come together to consider an important question: How can we do better? How can we break down barriers, pursue more cases, respond faster, identify best practices, and eliminate safe havens for criminals and their enterprises?

First and foremost, we must provide more effective assistance to each other. In this context, we should recognize the important work of the UN Office on Drugs and Crime. From 2013 to 2014, the United States pledged over $65 million to UNODC for its assistance programs, including $27.2 million for projects to combat transnational crime, trafficking, and related threats. We encourage more partners to support UNODC programs that advance implementation of the UNTOC and its Protocols. In addition, consistent with Article 30 of the Convention, the United States has established a wide range of bilateral and multilateral agreements with other

Member States to provide material, logistical, and training assistance and to enhance international cooperation against transnational crime. During Fiscal Years 2012 and 2013, the U.S. Department of State and the U.S. Agency for International Development have allocated more than $1.4 billion in funding to support technical assistance programs around the world focused on transnational crime, drug interdiction, law enforcement reform, financial crimes, intellectual property theft, cybercrime, trafficking in persons, migrant smuggling, and other challenges addressed by the Convention and its Protocols.

In addition to building the capacity of our national institutions, we must also recognize the important role played by actors outside the public sector. We will fail to decimate transnational organized crime without the full participation of civil society. Input from civil society is necessary to identify creative solutions, encourage debate, provide an external view regarding our own performance, and deliver critical services that augment scarce or shrinking government resources. Non-governmental organizations play a special role, both as first-line responders to victims of crime and as advocates on behalf of victims to help governments perform better. The media can shed light on instances of corruption and criminality. The private sector can also help prevent and respond to the criminal exploitation of commercial industries and financial systems. While States Parties have a unique level of responsibility under the Convention—and thus must always play a leading role on decisions within this Conference—we can only benefit from more cooperation and dialogue with civil society.

* * * *

In this context, our focus should remain on pursuing meaningful and effective implementation of the Convention within existing resources and mandates. The UNTOC provides a strong framework for expanding cooperation in a wide variety of practical ways, including through the Working Groups established by this Conference.

Mr. Chair, the United States is proud of our work together with our partners during the history of this Convention. Today, we are ready to begin work to find ways for the UNTOC to serve as an even more useful framework for preventing and responding to organized crime. Thank you for your leadership of this important body, and we look forward to another two years of progress.

* * * *

6. Piracy

In June 2014, The United States completed a government-wide Counter Piracy and Maritime Security Action Plan. As described in a June 20, 2014 State Department media note, available at *www.state.gov/r/pa/prs/ps/2014/06/228108.htm*:

> The plan affirms the U.S. commitment to repress piracy and related maritime crimes, strengthen regional governance and rule of law for the safety and security of mariners, preserve freedom of the seas, and promote free flow of

commerce through lawful economic activity. The Counter Piracy and Maritime Security Action Plan focuses on three core areas: prevention of attacks, response to acts of maritime crime, and enhancing maritime security and governance; and provides specific frameworks for the Horn of Africa and Gulf of Guinea. These frameworks establish a tailored and specific methodology for the focus regions, and provide guidance on how the United States will respond to the regional threats associated with the varying environments.

Under the plan, the U.S. Government will work toward the following objectives:

- Reduce the vulnerability of the maritime domain to piracy and related maritime crimes;
- Prevent pirate attacks and other related maritime crimes against U.S. vessels, persons, and interests, as well as those of our allies and partners;
- Interrupt and terminate acts of piracy, consistent with international law and the rights and responsibilities of other States;
- Ensure that those who commit acts of piracy are held accountable for their actions by facilitating the prosecution of suspected pirates, and ensure that persons committing related maritime crimes are similarly held accountable by regional, flag, victim, or littoral States or, in appropriate cases, the United States;
- Preserve the freedom of the seas, including all the rights, freedoms, and uses of the sea recognized in international law;
- Protect ocean commerce and transportation;
- Continue to lead and support international efforts to combat piracy and other related maritime crimes and urge other States to take decisive action both individually and through international efforts;
- Build the capacity and political will of regional states to combat piracy and other related maritime crimes, focusing on creating institutional capacity for governance and the rule of law; and
- Strengthen national law to better enable successful prosecution of all members of piracy-related criminal enterprises, including those involved in financing, negotiating, or otherwise facilitating acts of piracy or other related maritime crimes.

The plan is available at *www.whitehouse.gov/sites/default/files/docs/united_states_counter_piracy_and_maritime_security_action_plan_2014.pdf*.

C. INTERNATIONAL, HYBRID, AND OTHER TRIBUNALS

1. Expansion of the War Crimes Rewards Program

On January 15, 2013, President Obama signed into law the Department of State Rewards Program Update and Technical Corrections Act of 2012, S. 2318. Under the updated War Crimes Rewards Program, the Department of State may offer and pay cash rewards for information leading to the arrest, transfer, or conviction of foreign nationals accused of crimes against humanity, genocide, or war crimes by any international, mixed, or hybrid criminal tribunal. The original program offered rewards for information only about those indicted by the International Criminal Tribunals for the former Yugoslavia and Rwanda and the Special Court for Sierra Leone. On April 3, 2013, Stephen J. Rapp, Ambassador-at-Large for War Crimes Issues, participated in a special briefing about the expanded War Crimes Reward Program, announcing specific individuals for whom rewards were being offered under the program. Ambassador Rapp's remarks are excerpted below and are available in full at *www.state.gov/j/gcj/us_releases/remarks/2013/207031.htm*. Secretary Kerry also announced the reward offers and described the expanded War Crimes Reward Program on April 3 in a contribution to the Huffington Post, which is available at *www.state.gov/r/pa/prs/ps/2013/04/207033.htm*.

* * * *

We're here today to announce the designation of additional fugitives … for which a reward can be paid under recent legislation to expand the State Department's longstanding War Crimes Rewards Program. We're announcing today that the Secretary of State will offer up to $5 million for information leading to the arrests, the transfer, or conviction of three top leaders of the LRA, the Lord's Resistance Army: Joseph Kony, Okot Odhiambo, and Dominic Ongwen, as well as the leader of the Democratic Forces for the Liberation of Rwanda, known as the FDLR, Sylvestre Mudacumura. The nine fugitives that had earlier been designated for the ICTR, the Rwanda tribunal, will remain on the list.

Accountability is a key pillar of the United States Atrocity Prevention Initiative and our national security strategy, which states that the end of impunity and the promotion of justice are not just moral imperatives; they're stabilizing forces in international affairs. We act today so that there can be justice for the innocent men, women, and children who have been subjected to mass murder, to rape, to amputation, enslavement, and other atrocities.

I'd like to tell you just a little about this program and its expansion. It's managed by my office, the Office of Global Criminal Justice, here at the State Department. It originally offered rewards for information leading to the arrest or conviction of individuals indicted by the three international tribunals that were created for the former Yugoslavia, for Rwanda and Sierra Leone. Since 1998, our ability to pay these rewards has proven to be a valuable tool for the United States Government to promote accountability for the worst crimes known to humankind, by generating valuable tips that enable authorities to track down the world's most notorious fugitives from justice.

In the past two years alone, we've made 14 payments at an average of about 400,000 per person, with the largest payment being $2 million. The actual amount depends on a range of factors, including the risk, the informant, the value of the information, and the level of the alleged perpetrator. To date, with the assistance of the War Crimes Reward Programs, no indictee remains at the International Criminal Tribunal for the former Yugoslavia. 161 persons were charged; all of them have been brought to justice. In addition, out of the 92 individuals indicted by the Rwanda tribunal, only nine have yet to be apprehended. And these nine individuals are still subject to rewards of up to $5 million for information leading to their capture.

This program has sent a strong message to those committing atrocities that the deeds that they have done, for those deeds, they will have to answer in court. Nevertheless, while the program has achieved great success with these three tribunals, it risks becoming obsolete as they gain custody of their last remaining fugitives. To that end, we began to advocate for an expansion of the program to bolster our ongoing efforts to bring other alleged war criminals to justice. In early 2012, Congressman Edward Royce, who then headed a subcommittee and now chairs the full House Foreign Affairs Committee, and Secretary Kerry, who chaired Foreign Relations Committee in the Senate and now, of course, heads our Department, introduced bipartisan legislation to expand and modernize this program. The bill passed both houses unanimously with final legislative approval on January 1st, 2013. On January 15th, 2013, President Obama signed the legislation into U.S. law.

Under this expanded program, the Secretary of State, after interagency consultation and on notice to Congress, may designate individuals for whom rewards may be offered for information leading to their arrest, transfer, or conviction. The designated individuals must be foreign nationals accused by any international tribunal, including mixed or hybrid courts, for crimes against humanity, genocide, or war crimes. This includes the International Criminal Court, but also new mixed courts that may be established in places such as the Democratic Republic of Congo or for Syria.

To that end, the expanded program now targets the alleged perpetrators of the worst atrocities, some of whom have evaded justice for more than a decade. The LRA is one of the world's most brutal armed groups and has survived for over 20 years by abducting women and children and forcing them to serve as porters, sex slaves, and fighters. The International Criminal Court has issued arrest warrants for Joseph Kony and other top LRA leaders on charges of war crimes and crimes against humanity. For too long, the DRC has been plagued by conflict, displacement and insecurity. Innocent civilians have suffered continued atrocities at the hands of armed groups such as the FDLR and M23 that support themselves by pillage of the population and exploitation of precious minerals.

* * * *

2. International Criminal Court

a. Overview

On December 15, 2014, Ambassador Rapp delivered a statement on behalf of the U.S. observer delegation at the general debate of the Thirteenth Session of the annual

Assembly of States Parties ("ASP") to the International Criminal Court ("ICC") in New York City. Ambassador Rapp's remarks at the general debate are excerpted below and available at *www.state.gov/j/gcj/us_releases/remarks/242658.htm*.

* * * *

As the Ambassador-at-Large for Global Criminal Justice at the Department of State, I am pleased to address the Assembly of States Parties and our fellow observers on behalf of the United States of America. I would like to speak briefly about some of the work the United States has undertaken this year, together with many of you, in the common cause of justice.

Our work together has often taken place against a backdrop of commemoration. On several occasions in 2014, our governments have come together to reflect on the slaughter that devastated Rwanda twenty years ago. Our reflections have been solemn, but they have also given us a chance to see that there are areas in which we have made progress in the two decades since this tragedy—commitments we have deepened, practices we have adapted, ideas we have changed.

We also recognize that no nation is perfect, ours included. As Secretary of State John Kerry suggested on Tuesday, it demonstrates strength "…to recognize and wrestle with our own history, acknowledge mistakes, and correct course."

I'd like to begin by focusing on one area in which my government, like many of yours, has put a strong emphasis: taking strides to prevent and punish sexual violence more effectively, particularly in the context of armed conflict. …In particular, as Secretary Kerry said, "we will not, we should not, we cannot tolerate peace agreements that actually provide amnesty for rape."

…For our part, the United States is focused on deploying a wide range of tools, including new support to specialized and innovative judicial mechanisms that support access to justice for conflict-related sexual violence, and a new commitment announced in September of $12 million to help international organizations and NGOs prevent and respond to gender-based violence from the earliest stages of a humanitarian response.

* * * *

…Attaining accountability is no less vital an element of our response to such conflict and violence, and judicial institutions at every level are under strain as well. Faced with these strains, the United States continues to place a premium on what the Court has called "positive complementarity"—an effort to support countries in their own domestic efforts to strengthen the rule of law and pursue accountability for atrocity crimes in national, regional, and hybrid courts. We have worked closely with many of you in support of such solutions, and I will briefly discuss a few of them here.

In the Democratic Republic of the Congo, where persistent impunity has fueled a devastating series of conflicts, the United States has worked for many years to assist the Congolese to bolster the capacity of their military justice institutions. The recent conviction in domestic courts of Jerome Kakwavu, an army general, for rape and other crimes and the upcoming ICC trial of Bosco Ntaganda help reinforce a needed signal that all those responsible for crimes involving sexual violence should be held accountable, no matter what rank they hold. Given the scope of the accountability challenge in the DRC, we continue to advocate for the

establishment of mixed chambers that could help address more of the cases that cry out for justice.

In the Central African Republic, we applaud the commitment of the transitional authorities to pursue justice, through a referral to the ICC, as well as through the establishment of a special investigative unit and a mixed Special Criminal Court in its national system, under the terms of the agreement reached by the UN peacekeeping mission and the interim national authorities. Special courts that feature international participation within the context of national systems offer a particularly effective way to build domestic capacity and independence.

* * * *

For reasons that have been much discussed, the United States has not accepted the Court's jurisdiction. Nonetheless, in this context of global challenges, the United States has worked with the ICC to identify practical ways to advance our mutual goals, on a case-by-case basis and consistent with U.S. policy and laws. We have expressed our support for each of the situations in which ICC investigations and prosecutions are underway; and we have offered financial rewards for the apprehension of several of the fugitives at large in the ICC's current cases. As the safety of witnesses remains in many cases a grave vulnerability for the work of the ICC, we have continued to work with the Court to respond positively to requests for assistance relating to witness protection. While the Court has increasingly made use of its authority to deter and punish efforts to tamper with or intimidate witnesses, we encourage all states to do what they can to protect the vulnerable when they risk their lives and those of their families by testifying.

* * * *

I would also briefly highlight, as my government has consistently done since the 2010 Kampala review conference, the issue of the crime of aggression. We have previously praised the wisdom of that gathering in deciding to provide additional time for consideration by subjecting the activation of the Court's jurisdiction over this crime to a decision to be taken no earlier than 2017. That date, once distant, is now fast approaching, and it is becoming ever more vital for the States Parties and others to address the issues posed by the aggression amendments. In particular, we urge the States Parties to consider steps that might be taken to mitigate the risk that these amendments will work at cross purposes with legitimate efforts to prevent and punish the very atrocity crimes that have inspired our common efforts and provided the Court's raison d'être.

Finally, we remain concerned about the manner in which the decisions regarding Palestinian participation in this Assembly are being reported in some quarters. We recognize that these are only procedural decisions, and that they are without prejudice to decisions taken for any other purpose, including decisions of other organizations or any organs of the Court. The longstanding position of the United States on Palestinian status is well known and I will not repeat it here.

Next year, like this one, will be a year of commemorations. We continue to believe that one of the best ways of honoring the memory of victims and survivors – whether they be the men and women liberated from concentration camps at the end of the Second World War, the 1.5 million Armenians massacred or marched to their deaths in the final days of the Ottoman Empire, or the men and boys who were murdered at Srebrenica – is to learn and apply the lessons of past calamities. The United States will remain committed to the cause of preventing

such atrocities and promoting accountability, and we will continue to work with the other states and partners assembled here to support the dogged work—of strengthening institutions, collecting evidence, and bringing the truth to light—needed to ensure that we live up to this commitment, even in the face of an ever more challenging world.

* * * *

b. Syria: UN Security Council Vote on Referral to ICC

On May 22, 2014, Ambassador Samantha Power, U.S. Permanent Representative to the UN, delivered remarks after an unsuccessful attempt at the UN Security Council to pass a resolution referring the situation in Syria to the ICC. Russia and China both vetoed the resolution. Ambassador Power's remarks, excerpted below, are available in full at *http://usun.state.gov/briefing/statements/226438.htm*.

* * * *

Today is about accountability for crimes so extensive, so deadly, that they have few equals in modern history. Today is about accountability for Syria. But it is also about accountability for this Security Council.

It is this Council's responsibility to stop atrocities if we can and—at a minimum—to ensure that the perpetrators of atrocities are held accountable. It was toward that minimum that we sought to make progress today. My government applauds the vast majority of members of this Council who voted to support—and the some 64 countries who joined us in co-sponsoring—this effort to refer these atrocities to the International Criminal Court.

Sadly, because of the decision by the Russian Federation to back the Syrian regime no matter what it does, the Syrian people will not see justice today. They will see crime, but not punishment.

* * * *

A judicial process does more than hold perpetrators accountable. It also allows victims to speak. The vetoes today have prevented the victims of atrocities from testifying at The Hague for now. But nonetheless it is important for us here today to hear the kind of testimony we might have heard if Russia and China had not raised their hands to oppose accountability for war crimes and crimes against humanity.

* * * *

In the past, when extraordinary crimes have been carried out, the International Criminal Court has been able to act. Why is it that the people of Uganda, Darfur, Libya, the Central African Republic, the Democratic Republic of Congo, Cote d'Ivoire, Mali, and Kenya deserve international, impartial justice, but the Syrian people do not? Why should the International Criminal Court pursue accountability for atrocities in Africa but none in Syria where the worst

horrors of our time are being perpetrated? For those who have asked the Security Council this very reasonable question, today you have your answer: the Russian and Chinese vetoes.

Our grandchildren will ask us years from now how we could have failed to bring justice to people living in hell on earth. …

Today is therefore about accountability, not just for the victims of Assad's regime, …but for the members of this Security Council. Month after month, and year after year, we have each spoken about the importance of justice and the need for accountability in Syria. Victims and survivors have begged for action and cried for justice. The international community has supported *ad hoc* efforts to collect evidence, to record testimony. We've launched commissions of inquiry to find facts, and we've held meeting after meeting. But we have not, before today, brought forward a resolution to refer the situation in Syria to the International Criminal Court. We have not done so because we were afraid that it would be vetoed.

But the victims of the Assad regimes' industrial killing machine and the victims of terrorist attacks deserve more than to have more dead counted. They deserve to have each of us, the members of this Security Council, counted and held to account. They deserve to have history record those who stood with them, and those who were willing to raise their hands to deny them a chance at justice. While there may be no ICC accountability today for the horrific crimes being carried out against the Syrian people, there should be accountability for those members of this Council that have prevented accountability.

Now, the representatives from Syria, and perhaps Russia, may suggest that the resolution voted on today was biased. And I agree—it was biased in the direction of establishing facts; tilted, as well, in the direction of peace—the peace that comes from holding individuals—not whole groups, not "Allawites," not "Sunni," not "Kurds," but individuals—accountable.

The outcome of today's vote, disappointing as it is, will not end our pursuit of justice. My government will continue to work with so many other governments and organizations to encourage and facilitate the further gathering of evidence. …

* * * *

c. Democratic Republic of the Congo

On March 7, 2014, the U.S. Department of State issued a press statement on the verdict in the trial of Germain Katanga at the ICC. The statement, available at www.state.gov/r/pa/prs/ps/2014/03/223152.htm, follows:

> Today, the Trial Chamber of the International Criminal Court (ICC) convicted Germain Katanga, the commander of the *Force de Résistance Patriotique en Ituri* (FRPI) militia, for his responsibility for war crimes and crimes against humanity during a brutal February 2003 attack on Bogoro village in the Ituri Province of the Democratic Republic of the Congo (DRC).
>
> Past impunity for perpetrators in the DRC has fueled a destabilizing cycle of conflict and human rights abuses, and those who are responsible for atrocities in the DRC must be held to account. In that regard, the ICC's DRC cases represent

a significant step toward delivering justice for victims in the DRC. The United States reiterates its call for the apprehension of Sylvestre Mudacumura, another leader of an abusive rebel militia in the DRC who is subject to an arrest warrant by the ICC for war crimes. The Department of State continues to offer a reward of up to $5 million for information leading to his arrest.

Strong and effective national courts also have a vital role to play in ending impunity in DRC. We continue to support the Congolese government's efforts to hold perpetrators accountable through its domestic institutions, including through the creation of the proposed mixed chambers.

d. Darfur

On June 17, 2014, Peter Lord, U.S. Acting Minister Counselor for Political Affairs, addressed a UN Security Council briefing by the ICC Prosecutor on the situation in Darfur. Peter Lord's remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/227684.htm*.

* * * *

The continued work of the ICC in investigating ongoing war crimes and crimes against humanity in Darfur is made more difficult by the alarming levels of violence and the persistent failure of the Government of Sudan to abide by its obligations under Security Council resolution 1593 to cooperate fully with the ICC.

While the people of Darfur continue to await justice, the architects of the campaign of terror who bear the greatest responsibility for atrocities in Darfur go free. The consequences of this impunity are clear. Although the world first became aware of crimes in Darfur a decade ago, the government continues to use apparently indiscriminate aerial bombardments with deadly consequences for civilians. Violence in Darfur continues to escalate as paramilitary Rapid Support Force soldiers kill, loot, burn, and rape. This year, over 322,000 Darfuris have been forced from their homes, worsening a humanitarian crisis that has been compounded by humanitarian groups' lack of access.

Unsurprisingly, the violence has spread beyond Darfur's borders. We are outraged by reports of ongoing indiscriminate attacks, as well as targeted attacks against civilians, hospitals, and schools, in South Kordofan and Blue Nile states. These attacks have resulted in over 100,000 new displacements since May, interrupting the planting season.

The Government of Sudan has also not honored its commitments to justice and accountability under the Doha Document for Peace in Darfur. We have yet to see any credible, independent investigations into violations of international humanitarian law or violations of human rights, much less any cases for such acts prosecuted in the Special Courts for Darfur. Instead, we continue to see protracted assaults against civilians, peacekeepers, and humanitarian aid workers. If Sudan is to enjoy a peaceful, stable, and prosperous future, the government cannot be indifferent to the lives of its people.

But it is not just the Government of Sudan that has failed to live up to its commitments. We note the decisions issued by the ICC's Pre-Trial Chamber with respect to non-cooperation in the Darfur situation. As the report by the Office of the Prosecutor notes, President Bashir has traveled internationally on at least six occasions in as many months.

We note that African people have not always welcomed his visits. Last year, public protests and actions to compel President Bashir's arrest caused him to depart one country before he was able to make an appearance and activists in another country filed petitions to demand President Bashir's apprehension and transfer to The Hague. The Security Council should take a cue from these groups and do more to follow up on implementation of Resolution 1593, as inaction only emboldens perpetrators in Sudan and elsewhere.

In closing, the United States continues to believe that working to ensure justice and accountability for war crimes, crimes against humanity, and genocide is not just a moral obligation, but is integral to ensuring a lasting and durable peace in Sudan. We will continue to support Prosecutor Bensouda and the ICC's efforts to bring to justice those most responsible for serious crimes in Darfur.

* * * *

On December 12, 2014, Ambassador David Pressman, U.S. Alternate Representative to the UN for Special Political Affairs, addressed a UN Security Council briefing by the ICC Prosecutor on the situation in Darfur. Ambassador Pressman's remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/234985.htm*.

* * * *

This year marks a truly sad milestone. It has been ten years since the Security Council first condemned reports of large-scale attacks on civilians, sexual violence, and forced displacement in Darfur, urged the government to seek a peaceful, political resolution to the conflict and bring perpetrators of such crimes to justice. When the Sudanese government failed to do this, this Council took the historic step to refer the situation in Darfur to the International Criminal Court in March of 2005.

The ICC has sought to bring justice to the victims of Darfur, and we continue to believe it is essential to pursue accountability for those most responsible for genocide, war crimes and crimes against humanity there.

In the decade that has passed since the Security Council first addressed Darfur, the international community has made enormous strides to bring those responsible for atrocity crimes to justice in other parts of the world. From Charles Taylor in Liberia, to the most senior surviving members of the Khmer Rouge regime, to Congolese warlord Thomas Lubanga, the world has shown that it will combat impunity for atrocities perpetrated against civilians.

Yet, the progress that has occurred elsewhere in the world has cruelly bypassed Darfur. The same crimes that the Commission of Inquiry uncovered and the Security Council denounced – involving widespread killing of civilians, torture, kidnapping, enforced disappearances, rape, pillaging, forced displacement, and destruction of villages – have been committed and continue to be committed by government forces, rebel groups, and government-aligned militia. Indeed, the Rapid Support Forces, which are now active in Darfur, employ the same tactics as the Janjaweed and are, as the prosecutor

notes, funded, trained, equipped, and administered by the Government of Sudan's National Intelligence Security Service and commanded by the Government of Sudan's armed forces during military operations.

Further, the scorched-earth tactics the Sudanese government has pursued in Darfur were precursors to conflicts both in Blue Nile states and South Kordofan, where the Rapid Support Forces have also terrorized civilians.

The ICC's task is not an easy one. The government of Sudan's lack of cooperation and its disregard for the Security Council's decision to refer the situation in Darfur to the ICC pursuant to Resolution 1593 is so profound that the prosecutor's report recounts that a cooperation request with respect to Abdallah Banda was simply returned to the court by the Government of Sudan, the envelope unopened.

As Prosecutor Bensouda's report indicates, recent developments remain deeply concerning. We are particularly concerned about recent reports of mass rape in Tabit, North Darfur, which have not yet been fully investigated. The limited interviews of villagers in Tabit to investigate this alleged mass rape was done in the presence of the Government of Sudan's military intelligence and soldiers, some of whom were recording the interviews. This does not count as an investigation – it is only intimidation.

UNAMID has a responsibility to investigate. It has a mandate to investigate. And the government of Sudan has an obligation to stop interfering. We again call upon the Sudanese government to remove immediately all obstacles to UNAMID's full and proper discharge of its mandate, including to its freedom of movement in areas where it is operating in accordance with the mandate this Council has given it.

For its part, UNAMID has played a critical role in monitoring, investigating, and reporting on the facts on the ground, and must remain on the ground – without obstruction – in order to fulfil its role protecting civilians.

In this regard, though, it is important to note, as other colleagues have, that on October 29, the Secretary-General informed the Security Council of the results of a review of UNAMID reporting, following allegations of UNAMID underreporting that had been brought to the attention of the ICC Prosecutor and to which she referred in her briefing today. The review found that in nearly one-third, approximately one-third of the incidents that were the subject of the allegations, UNAMID did not provide a full accounting of the facts, and curiously, the details that were omitted were usually details that identified the Government of Sudan or government-proxies as perpetrators. The review team recommended that the practice of the mission's "censoring itself in its reporting to Headquarters …needs to be addressed immediately."

These findings should be deeply concerning to every member of this Council. The Security Council was recently briefed by the head investigator and the United States urges immediate action to address the abuses uncovered in this investigation. Accordingly, we welcome the Secretary-General's commitment to take all necessary steps to ensure that UNAMID's reporting is full, accurate, and timely, and that the mission's engagement with the public is open, forthcoming, and not manipulated.

Justice cannot alone bring back the lives lost or undo the damage caused by killings, rape, and destruction of homes and livelihoods. But it serves as an important foundation for healing so that survivors can rebuild their lives, fully participate in the restoration of their communities, and lay a foundation for the rule of law. We cannot abandon the people of Darfur to a government complicit in and indifferent to their suffering. We must continue to find ways to provide some measure of justice to the people who have waited far too long to see the crimes against them punished and we continue to call on the Government of Sudan and all other parties to the conflict in Darfur to cooperate fully with the International Criminal Court as required by UN Security Council Resolution 1593.

Prosecutor, your words today were clear, candid, and your warnings concerning. You have spoken of the danger of investigations going into hibernation due to continued lack of cooperation, obstruction, intimidation, all amidst ongoing attacks on civilians. The danger of these cases going into hibernation must be a wake-up call. You have spoken of the lack of progress; that, simply, virtually nothing is happening to advance justice for the people of Darfur. This is a travesty. If these cases are in danger of going into hibernation, we must collectively and urgently wake from our slumber.

* * * *

e. Libya

In 2011, the UN Security Council adopted resolution 1970, referring the situation in Libya to the ICC. See *Digest 2011* at 91-93. On May 13, 2014, the United States participated in a Security Council meeting on the Libya referral. Mark Simonoff, Minister Counselor for Legal Affairs for the U. S Mission to the UN, delivered remarks on behalf of the United States. His remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/226019.htm*.

_____

* * * *

Three years ago, with the adoption of Resolution 1970, this Council called for accountability in Libya. Today, we see real steps towards accountability in Libya both at the international and domestic levels. We welcome reports of collaboration between Libya and the Office of the Prosecutor in connection with ongoing investigations. And, we note that Libya and the Office of the Prosecutor have signed an MOU, which we hope will facilitate collaboration going forward.

Cooperation is key. We know, of course, that the admissibility proceedings in the cases against Saif Al-Islam Qadhafi and Abdullah Al-Senussi are ongoing. These proceedings have presented novel and important questions—both for the Court and for the Libyan government. As the proceedings continue in the Libya situation, we continue to urge Libya to cooperate with the ICC and to take steps to ensure that perpetrators of the worst crimes are held to account.

In addition to the Court's proceedings, we know that Libya still faces many challenges to support justice and accountability. The government will only benefit from continuing to work with the international community to bolster its own, domestic capacity in the justice system, and to ensure that both high profile former regime figures and the thousands of conflict-related detainees are only held in accordance with applicable international legal obligations. All detainees should be transferred to government-controlled facilities promptly, and must be treated humanely.

Within the context of a transitional justice strategy, the Libyan authorities may need to prioritize prosecutions that will focus on those who bear the greatest responsibility for the crimes. Beyond prosecutions, we encourage Libya to explore other accountability measures, such as those envisioned in Libya's transitional justice law.

Additionally, we underscore the importance of Libya conducting domestic investigations and prosecutions in a manner consistent with Libya's international obligations. In addition, prosecutions that respect the rights of defendants – including those who were members of the former regime—and that provide them proper fair trial guarantees, will contribute to strengthening public confidence in the judiciary and the rule of law in Libya.

As we look at the bigger picture, the United States remains very concerned by the rising instability in Libya. This instability threatens to undermine the revolution for which Libyans

fought so dearly, and to jeopardize Libya's transition to a democratic and prosperous State in which all Libyans can participate. Together, we must be clear about what is at risk.

The United States will continue to support Libya in its efforts to ensure security and protect all of its citizens and democratic institutions. We also applaud the seating of Libya's constitution-drafting assembly. We remain committed to supporting the Libyan government and institutions through this difficult phase.

Finally, we look forward to the ongoing work and partnership with the United Nations, Libya, and Libya's international partners, and to explore appropriate ways we can advance critical initiatives for peaceful democratic transition and vital national reconciliation efforts, including assistance pledged at this year's Rome Ministerial.

* * * *

On November 11, 2014, Ambassador A. Elizabeth Jones, Special Advisor, delivered remarks at a UN Security Council briefing by ICC Prosecutor Fatou Bensouda on the situation in Libya. Ambassador Jones's remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/233943.htm*.

* * * *

When this Council decided in 2011 to refer the situation in Libya to the ICC, it stressed the importance of accountability. Even with Libya's increasingly complex and unstable security situation, the call for accountability remains necessary.

Like Prosecutor Bensouda, we are alarmed by the growing number of atrocity crimes in Libya. These abuses and violations are laid out not only in the Prosecutor's report, but also in the Secretary General's September report to this Council and in a range of reports from civil society organizations and other observers on the ground. The United States condemns the recent surge in politically motivated killings, kidnappings, and other abuses, many of which appear calculated to silence and intimidate a wide range of actors, from politicians and journalists to human rights defenders and civil society organizations. Assassinations, violence, and the intimidation of judges, lawyers, and the judicial police resulted in the closure of courts in Benghazi, Sirte, and Derna, and the spread of coercion throughout the justice system.

Nevertheless, cooperation with the ICC remains critical. We welcome Libya's continued coordination with the ICC's Prosecutor and Registry, including with their memorandum of understanding and their approach to burden-sharing. We encourage Libya to continue to prioritize prosecutions that focus on those who bear the greatest responsibility for their crimes and to explore other accountability measures, such as those envisioned in Libya's transitional justice law.

Libya and this Council have an interest in ensuring that the alleged perpetrators of atrocity crimes in Libya – including the ex-regime officials who are already the subject of ICC proceedings – are held to account, and that this is done in a way consistent with the rights of the defendants and Libya's international obligations.

The United States continues to call on all parties to accept an immediate and comprehensive ceasefire that would allow for the political process to proceed, and to engage constructively in the UN-led political dialogue to resolve the ongoing crisis.

We are deeply concerned about the explosions near the meeting between Prime Minister Al Thinni and SRSG Leon this past Sunday, November 9th. While the circumstances of that event are unclear, we emphasize that the political process must continue despite the challenging circumstances in Libya, since only a political solution can pave the way for the country's democratic transition. We support SRSG Leon's continued commitment to achieving this goal through political consensus.

We urge neighboring countries to support the Libyan government through sustained and constructive engagement. We also support the implementation of this Council's Resolution 2174, particularly its measures to address threats to Libya's peace and stability or security. But Libya's ability to navigate its many challenges – and to secure justice for the worst crimes against Libyan civilians – ultimately depends on the willingness of all parties to the conflict to put Libya's future above their own narrow political and economic interests.

In conclusion, let me reiterate our thanks to Prosecutor Bensouda and her office for the work they have done to advance the cause of justice for the people of Libya.

* * * *

f. UN General Assembly

On October 31, 2014, Carol Hamilton, U.S. Senior Advisor, delivered remarks at a UN General Assembly meeting on the Report of the International Criminal Court. The remarks, excerpted below, are available in full at *http://usun.state.gov/briefing/statements/234014.htm*.

* * * *

Strengthening accountability for those responsible for mass atrocities remains a priority for the United States. As President Obama's National Security Strategy lays out, "the United States has seen that the end of impunity and the promotion of justice are not just moral imperatives; they are stabilizing forces in international affairs." To those ends, the United States is committed to working with the international community in a common effort not only to help prevent atrocities wherever it is possible, but also to ensure accountability for the perpetrators of the worst crimes in the world.

The framers of the Rome Statute charged the ICC with pursuing only those accused of bearing the greatest responsibility for the most serious crimes, and only when states are not willing or able genuinely to investigate or prosecute such crimes in the Court's jurisdiction. Much in the same way, the United States supports an approach of "positive complementarity." Given the importance of local ownership, the responsibilities that states have for protecting their own populations, and the limited capacity of any international body in this regard, we place a premium on supporting countries in their own domestic efforts to establish the rule of law and

pursue accountability for atrocity crimes. From the Democratic Republic of the Congo's domestic efforts to begin holding abusive soldiers and armed group members accountable, to Senegal's unique work with the African Union and the Chadian government to prosecute those responsible for alleged crimes committed during the Hissène Habré administration, the United States continues to support efforts to build fair, impartial, and capable national justice systems, as well as hybrid tribunals where appropriate.

At the same time, more work should be done to strengthen accountability mechanisms at the international level. The United States has long been a supporter of such mechanisms, ranging from the ad hoc tribunals established by the UN Security Council in the 1990s to many of the unique hybrid arrangements that emerged in the following years. And although the United States is not a party to the Rome Statute, we recognize that the ICC can play an important role in a multilateral system that aims to ensure accountability and end impunity.

The United States continues to work with the ICC to identify practical ways in which we can work to advance our mutual goals, on a case-by-case basis and consistent with U.S. policy and laws. In the past year, after we witnessed the shocking atrocities that have taken place in the Central African Republic, the United States expressed its support for the decision of the Office of the Prosecutor – made at the request of the interim government – to open a new investigation into the situation there. Accountability remains a critical element of the international community's response to the crisis in the CAR, and the United States supports the coordinated efforts of the UN, the interim government, regional and international partners, and civil society to begin to address the destabilizing impact of impunity for these horrible crimes. The United States also continues to offer rewards for information leading to the arrest of several of the individuals facing ICC arrest warrants for alleged atrocity crimes, including Sylvestre Mudacumura and Joseph Kony.

* * * *

Finally, we would note the importance for the international community of grappling with the crime of aggression. The United States continues to have many concerns about the related amendments adopted in Kampala, including the risk of these amendments working at cross-purposes with efforts to prevent or punish genocide, crimes against humanity, and war crimes. As we have consistently said, the States Parties were wise to create breathing space by subjecting the Court's jurisdiction to a decision to be taken after January 1, 2017. The international community should use that breathing space to ensure that efforts to ensure accountability for atrocity crimes can be consolidated and that measures regarding the amendments can be properly considered. It remains our view that States should not move forward with ratifications pending the resolution of such issues.

Mr. President, the international community continues to face a daunting challenge in the long-standing and ongoing systematic, widespread and

gross violations of human rights in the Democratic People's Republic of Koreasuch crimes are held accountable. Although the international community has made progress on both fronts, much work remains. None of us can bear this burden alone, and our success will continue to depend in large part on our ability to work together.

* * * *

On December 18th, 2014 the UN General Assembly adopted a resolution expressing grave concern at the findings of the Commission of Inquiry into the human rights situation in North Korea. The resolution condemns the "the long-standing and ongoing systematic, widespread and gross violations of human rights in the Democratic People's Republic of Korea." U.N. Doc. A/RES/69/188. The vote on the resolution was 116 in favor, 20 against, with 53 abstaining. The resolution also encourages the Security Council to "take appropriate action to ensure accountability, including through consideration of referral of the situation in the Democratic People's Republic of Korea to the International Criminal Court and consideration of the scope for effective targeted sanctions against those who appear to be most responsible." On December 22, 2014, Ambassador Power delivered remarks on the Commission's report and the resolution, highlighting the need for accountability. Her remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/235494.htm*.

* * * *

A major impetus for the Security Council taking up this issue was the comprehensive report issued in February 2014 by the UN Human Rights Council Commission of Inquiry. The Commission of Inquiry conducted more than 200 confidential interviews with victims, eyewitnesses, and former officials, and held public hearings in which more than 80 witnesses gave testimony. Witness accounts were corroborated by other forms of evidence, such as satellite imagery confirming the locations of prison camps.

North Korea denied the Commission access to the country, consistent with its policy of routinely denying access to independent human rights and humanitarian groups, including the Red Cross and UN special rapporteurs. And despite repeated requests, the DPRK refused to cooperate with the inquiry.

The main finding of the Commission's thorough and objective report is that "systematic, widespread and gross human rights violations have been and are being committed by the Democratic People's Republic of Korea." The Commission found that the evidence it gathered provided reasonable grounds to determine that, "crimes against humanity have been committed in the Democratic People's Republic of Korea, pursuant to policies established at the highest level of the State."

* * * *

The Security Council should demand the DPRK change its atrocious practices, which demonstrate a fundamental disregard for human rights and constitute a threat to international peace and security.

We should take this on for three reasons. First, the DPRK's response to the Commission of Inquiry's report—and even to the prospect of today's session—shows that it is sensitive to criticism of its human rights record. Just look at all the different strategies North Korea has tried in the past several months to distract attention from the report, to delegitimize its findings, and to avoid scrutiny of its human rights record.

* * * *

The second argument for exerting additional pressure is that when regimes warn of deadly reprisals against countries that condemn their atrocities, as the North Koreans have done, that is precisely the moment when we need stand up and not back down. Dictators who see threats are an effective tool for silencing the international community tend to be emboldened and not placated. And that holds true not only for the North Korean regime, but for human rights violators around the world who are watching how the Security Council responds to the DPRK's threats.

* * * *

Third, the international community does not need to choose between focusing on North Korea's proliferation of nuclear weapons and focusing on its widespread and ongoing abuses against its own people. That is a false choice. We must do both. As we have seen throughout history, the way countries treat their own citizens—particularly those countries that systematically commit atrocities against their own people—tends to align closely with the way they treat other countries and the norms of our shared international system.

* * * *

Knowing the utter improbability of North Korea making those and a long list of other necessary changes, it is incumbent on the Security Council to consider the Commission of Inquiry's recommendation that the situation in North Korea be referred to the International Criminal Court and to consider other appropriate action on accountability—as 116 Member States have urged the Council to do.

In the meantime, the United States will support the efforts of the Office of the High Commissioner for Human Rights to establish a field-based office to continue documenting the DPRK's human rights violations, as mandated by the Human Rights Council, as well as support the work of the Special Rapporteur. Both should brief the Council on new developments in future sessions on this issue.

* * * *

3. International Criminal Tribunals for the Former Yugoslavia and Rwanda and the Mechanism for International Criminal Tribunals

On June 5, 2014, Ambassador Jeffrey DeLaurentis, U.S. Alternate Representative to the United Nations, delivered remarks at a Security Council Meeting on the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), the International Criminal Tribunal for Rwanda ("ICTR"), and the Mechanism for International Criminal Tribunals ("MICT"). Ambassador DeLaurentis's remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/227171.htm*.

* * * *

…[T]he United States has strongly supported the work of the International Criminal Tribunals for the Former Yugoslavia and Rwanda since their inception. These two courts have tried more than 200 defendants accused of genocide, war crimes, and crimes against humanity, including top political and military leaders. This has been a complex and unprecedented undertaking; yet the tribunals have demonstrated a commitment to fairness, impartiality, and independence. Today we see—as demonstrated by events in Syria, South Sudan, the Central African Republic, and elsewhere—that mass atrocities still pose a challenge to the global community. And we also see that the record of the ICTY and ICTR provides a warning to leaders that the choices they make and the orders they give can have serious personal consequences.

With the work of the tribunals now nearing completion, the United States commends the efforts of the Presidents and Prosecutors of both tribunals to transfer the remaining functions to the Mechanism for International Criminal Tribunals. At the same time, we understand the need for flexibility and recognize that the exact closure dates will depend on the completion of ongoing and soon-to-begin trials and appeals.

Turning to the ICTY, we note with satisfaction that the tribunal continues to focus on the completion of all trials and appeals, having rendered four appellate judgments between November 2013 and May 2014. We are pleased that the trial of Ratko Mladic is moving forward as forecast, and that a judgment in the case of Radovan Karadzic is expected next year. These two men are accused as architects of the Srebrenica genocide, the worst crime committed on European soil since World War II. Completing their trials will help to close the book on one of the most painful chapters in the history of the former Yugoslavia. We urge all governments in the region to continue working towards reconciliation, to avoid statements that inflame tensions, and to continue to bring war criminals to justice in local courts.

Regarding the ICTR, we are pleased that the tribunal has wrapped up its workload of trials and continues to complete appeals. The Mechanism in Arusha opened in 2012 and has smoothly taken over most prosecution and judicial responsibilities. The United States remains concerned, however, that nine ICTR fugitives remain at large. These alleged mass murderers must be brought to trial, and the United States urges all UN members, especially those in the region, to cooperate with the tribunal in the apprehension of these nine men. The United States continues to offer monetary rewards for information leading to their arrest, whether those individuals will be prosecuted in the mechanism or in Rwandan courts. We are working very closely with the ICTR tracking team, as well as the Rwandan government and INTERPOL, to form an international task force later this year, with a view to increasing collaboration in the search for these fugitives. We also call on regional governments to work with the tribunal on the relocation of several persons who have been acquitted by the ICTR or served their sentences but whose return to Rwanda is problematic.

We see the historic contributions these two tribunals have made to international criminal justice. They have brought to justice some of the most vicious criminals in the history of humankind. They have also assembled an historical record that will be publicly accessible and that will protect the truth from those who might, in the future, attempt to deny or distort it. They demonstrate that the world does not forget. Political and military leaders perpetrating atrocities today should ponder this lesson carefully.

* * * *

On October 13, 2014, at the 69th UN General Assembly, Carol Hamilton, Senior Adviser to the U.S. Mission to the UN in New York, delivered remarks on the ICTR, ICTY, and MICT. Her remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/233406.htm*.

---

* * * *

This year, the world marked the 20th anniversary of the Rwandan genocide. In supporting the creation and work of the ICTR, the international community came together to assist Rwanda in its recovery efforts. Today, the work of the ICTR's trial chamber is complete, and the tribunal continues to work hard to pass along its duties to national courts and to the Mechanism. This year, the tribunal transferred one case to the Rwandan courts for trial, and sent a significant portion of its archives to the Mechanism. By the end of this year, the court's appeals work is scheduled to be completed in all but one case. The tribunal has also added to its already substantial legacy by preparing a manual of best practices for the investigation and prosecution of sexual and gender-based violence, so that the world can continue its landmark work in prosecuting these unspeakable crimes.

The work of the ICTY is just as impressive. Only 9 cases remain, and the tribunal has worked hard to expedite those proceedings without sacrificing due process and the rights of the accused. President Meron wisely precluded delays by welcoming two additional judges to the tribunal, thereby reducing the chance that the judges' workload would instead delay the conclusion of the proceedings. In addition to transferring some of its functions to the Mechanism, the tribunal has also provided information and expertise to national courts in order to facilitate the domestic prosecutions of crimes committed during the wars in the former Yugoslavia, so that the important work begun by the ICTY will continue after the tribunal has completed its operations.

The United States also commends the continuing efforts of the tribunals over the past several years to wind down their operations and transfer their remaining workload to the Mechanism, as the tribunals progress ever closer to the completion of their historic work.

The contribution of the ad hoc tribunals cannot be overstated. These tribunals have made immeasurable contributions to the development of international law in ensuring accountability for genocide, from recognizing rape as a crime against humanity to compiling data on how to prosecute war crimes and crimes against humanity. Indeed, it is difficult to imagine modern international law today without the contributions of the ICTR and the ICTY. The very existence of these tribunals represents the commitment of the international community to keep moving forward, to keep improving our responses to atrocities, and to keep evolving as a human race until these abominable crimes are a relic of the past. The ad hoc tribunals and the work they have done have not only brought justice to communities torn asunder; they have brought us one step closer to the day when we can look forward and say with certainty, "Never again."

* * * *

4. Khmer Rouge Tribunal ("ECCC")

In 2014, the United States continued to support the work of the Extraordinary Chambers in the Courts of Cambodia ("ECCC"), also known as the Khmer Rouge Tribunal. On December 4, 2014, Secretary of State John Kerry signed a certification that the Government of Cambodia has provided, or otherwise secured, funding for the national side of such tribunal. Secretary Kerry provided the certification pursuant to Section 7043(c)(4) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2014 (Division K, Pub. L. 113-76) (SFOAA).

On August 7, 2014, the Trial Chamber of the ECCC delivered verdicts against two surviving leaders of the Khmer Rouge, finding them guilty of crimes against humanity and sentencing them to life imprisonment. Secretary Kerry issued a press statement on the verdicts, excerpted below and available at *www.state.gov/secretary/remarks/2014/08/230378.htm*. Ambassador Power also issued a statement on the verdicts, available at *http://usun.state.gov/briefing/statements/230414.htm*.

---

* * * *

More than 30 years after the Khmer Rouge slaughtered some 1.7 million people, Cambodians have received a small measure of justice and a reminder that justice may not be swift, but justice is resolute. Today's verdict against two of the most senior surviving members of the Khmer Rouge is a milestone for the Cambodian people who have suffered some of the worst horrors of the 20th century.

* * * *

The effort to try those most responsible for these horrific crimes was long overdue and absolutely vital.

I'll never forget the inspiring story of the photojournalist Dith Pran, whose survival during those bloody years was a triumph of the human spirit. He once said, "The dead are crying out for justice." And believe me: through the ECCC, the international community is working together to make sure that those cries are finally heard.

The United States will continue to support the efforts of the ECCC to secure justice and shed light on the darkest chapter of Cambodian history. Today's verdict is a historic, if long delayed, step along the path for Cambodia. We must now help Cambodia's people see the job through as they usher in a new era of justice, accountability, and reconciliation.

* * * *

Cross References

Visa and information sharing agreements, **Chapter 1.C.5.**
Certain Limited Exemptions for those providing support for Tier III Groups, **Chapter 1.C.6.**
Kuwait's reservation to the Terrorism Financing Convention, **Chapter 4.A.3.**
ILC's work on the obligation to extradite or prosecute, **Chapter 7.D.2.**
Maritime security and law enforcement, **Chapter 12.A.5.**
Wildlife trafficking, **Chapter 13.C.**
Arab Bank v. Linde *(involving allegations of support for FTOs),* **Chapter 15.3.a.**
Terrorism sanctions, **Chapter 16.A.4.**
Lord's Resistance Army, **Chapter 17.B.3.**
Use of force issues related to counterterrorism, **Chapter 18.A.1.**
Detainee criminal prosecutions, **Chapter 18.C.3.**
Implementation of UNSCR 1540, **Chapter 19.C.**